### Judiciary Committee PUBLIC HEARING Monday, March 31, 2014 10:00 AM in Room 1D of the LOB

## Raised S.B. No. 494: AN ACT CONCERNING GUARDIANS AD LITEM AND ATTORNEYS FOR MINOR CHILDREN IN FAMILY RELATIONS MATTERS

Judiciary Committee Testimony of Pamela D. Eisenlohr dated March 31, 2014 regarding the proposed Raised S.B. No. 494 presented for Public Hearing on March 31, 2014 by email delivery to: <a href="mailto:jud.testimony@cga.gov">jud.testimony@cga.gov</a>

I want to thank the Judiciary Committee for responding so quickly to the concerns raised by our National and Local Connecticut Citizens, Parents, Legislators, and by the Task Force to Study Legal Disputes Involving the Care & Custody of Minor Children including those presented at the Public Hearing of January 9, 2014.

Please note that I <u>DO NOT</u> support the proposed Raised S.B. No. 494: AN ACT CONCERNING GUARDIANS AD LITEM AND ATTORNEYS FOR MINOR CHILDREN IN FAMILY RELATIONS MATTERS as it is presented for Public Hearing on March 31, 2014. This proposed S.B. No. 494 is excessively passive and needs a stronger implementation utilizing all the "best interest" standards for children including with serious regard, focus, and to clarify the law in place now of any ambiguity as to whether a Guardian ad litem or an Attorney for Minor Children needs to be appointed at all over that of the child's parents.

The proposed Raised S.B. No. 494, whether by the officers who drafted it or by those persons that will do the serving for children; gives no real relevance to the best interest standards for children, requirements for education, processes, delays, performance of duties, rights of the family, or to the developmental stages of the children that may need to be served. The Raised S.B. No. 494 does nothing to safe guard or implement and protect the constitutional rights of children and parents, to fundamental liberty interest of fit parents, rehabilitated parents, to the care, custody and companionship of our children and rights to familiar associations upheld by our U.S.

Supreme Court decisions. The state may not "force the breakup of a natural family over the objections of the parents and their children, without some showing of unfitness warranting the removal of children by DCF/CPS and for the sole reason that to do so was thought to be in the children's best interests.

- 1. In regard to Bill #494, Sec. 1: Families and children do not need appointments of GALs and AMCs simply because there is a dissolving of a marriage or custody dispute as long as both parents are fit parents. The public needs a clear definition as to what level of severity of any wrongdoing or behavior concerns would raise to a level to allow Courts to remove a child from its parents when a DCF/CPS agency does not or has not removed a child absent any removal action by DCF/CPS and that of clear, documented, and convincing evidence should not lend to allow counter action on simple preponderance of the evidence, voiced claim of opinion that is a gap that lends to excessive discretion and without such evidence, that gap needs to be closed. I also believe that this Committee should take a look back to review why GALs/AMCs were expanded from the Probate Court and Juvenile Courts into Family Courts and if those Probate Courts and Juvenile Courts are the more appropriate forum for GALs/AMCs assignments.
- 2. In regard to Bill #494, Sec. 1(c) & Sec. 6: There needs to be base line assignments across the board for all GALs/AMCs and caps on fees charged by GALs/AMCs including for financial concerns/ability for the parties to pay and for keeping in mind that many families involved in a dissolving marriage or custody dispute are already likely facing financial hardships. This Committee should look to how other States across the nation who have drafted statutes, regulations, and methods for monitoring fees including for implementing base line assignments for GALs/AMCs whether or not the Court will require more direction for those fact finding assignments, whether they are needed in the Court room, etc. there needs to be baseline expectations, financial caps, proper relevant education over the thirty hours,

oversight, uniformities for certifications as to the accreditations and performances as GALs/AMCs given the public interests in these family matters.

3. I also believe that this Committee should take a look back to review why GALs/AMCs were expanded from the Probate Court and Juvenile Courts, also to review those fees and caps were not more than \$500.00 retainer with oversight on flat rate hourly fees thereafter. There is a great need for the preservation and protection of assets, educational funds, and insurance policies for the benefit of the child as well as for the parent. If the parents cannot pay for services - then no sliding scale is going to work for that short fall and these parents should not be deprived of their relationship with their child because of it.

Connecticut launched a Task Force to Study Legal Disputes Involving
the Care & Custody of Minor Children including that many concerned
citizens presented testimony at the Public Hearing of January 9, 2014
offering concerns, remedy, and valuable recommendations and reports many of which have been overlooked in this Bill #494 – please review
and reconsider those valuable recommendations for implementation in
this raised S.B. #494.

I would also ask that this Committee take a close look at how other States regulate GALs/AMCs including that Our Sister State of Virginia has implemented a 66 page program for GALs/AMCs that offers many relevant procedures for caps on fees, procedure, and oversight that could easily be implemented in Connecticut and refined to make Connecticut a model State in the face of urgently needed reform for family matters and GALs/AMCs.

#### Please See:

http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/children/advocacy\_in\_motion.pdf (also attached as a secondary reference pdf document with this testimony)

- 4. In regard to Bill #494, Sec. 4: A tracking system should be implemented for all GALs/AMCs through a public access registry which includes their background, education, training, experience, assignments, and Court locations for assignment. As a certified GAL/AMC on this registry, the GAL/AMC should include at least a resume, a CV (curriculum vitae) or a bio (career biography) along with the certification information that they hold. There should be a rotational plan for assignments and locations to help eliminate any bias, favoritism, or potential conflicts of interest in assignments.
- 5. An impartial agency should be established for GAL/AMC oversight as a critical component for enforcement, for compliances, and for removal procedures of any GAL/AMC. It is crucial that there be avenues for transparency and for enforcement of GALs/AMCs actions and for implementing mandates including for reprimands, sanctions and for removal from service. For example; disregarding reasons for mandated reporting, domestic violence and/or arrests, any withholding critical evidence such as doctor reports, or for misleading investigations, or for allowing bias, or for absences to Court hearings, or refusal to answer Appellate Justices inquiries, or for allowing unnecessary delays, and for false billings Should all be grounds for dismissal and should allow for retroactive recourses should such discovery be made or harm caused after the fact and by Court decisions. Consideration for this agency membership should be independent of the legal circle or any GALs/AMCs.
- 6. I believe it is in the public interest that the GAL be well educated know about family structures and child protection including prior education in such matters come before being given any placement on the registry or assigned with any family or in any court including a requirement for yearly ongoing training programs for recertification focusing on child development, domestic abuse, parental alienation, coercive behaviors, and realistic family dynamics that affect children and families.

The training should expanded to include a minimum two year apprenticeship assignment under an experienced accredited and registered GAL/AMC, DCF/CPS case worker, Social worker, or Forensic psychologist who has a minimum of 5 consecutive years of active participation tenure in child custody matters. The GALs/AMCs should also be mandated to submit a written case study involving their active participation in a DCF/CPS family case within two years from the date of their first certification date or lose their certification altogether until the case study is submitted and until the initial GAL/AMC training program is successfully completed a second time.

A GALs/AMCs training and education should also incorporate mandated steps for in-depth relevant training focused on ongoing training, mandated reporting, record keeping, and disclosure, policies for interviewing and actual fact finding, for transparency, and shorten time delays well below that of the suggested six months reviews should be cut down to a few weeks, incorporate immediate parenting time and communicate obvious concerns through mandated meetings with Family services before the tearing apart of families and before the loss of parenting time and before damage to parent/child bonds and before financial ruin – this should be done immediately within weeks – not months – not years! The ability or inability of a parent to pay a bill should never interfere with parent's right to be a parent to their child and spend time with their child.

The reform of the GALs/AMCs, their oversight, and their affiliated programs including S.B. #494 is of great public interest including the children they serve will reap the benefits of their commitment and of their completing the mandates put on them for their continuing education and transparency as they focus on child development, social work, forensic psychology, high conflict therapy, family preservation, family reunification, and the presumption of shared parenting allowing the child to have both parents involved in their

lives and for parents to remain involved in their child's lives and in their parenting.

7. In regard to Bill #494, Sec. 3: I am also concerned with this paragraph-which has very little to do with GAL/AMC reform, allowing a third party to enter the case, and/or allowing the judiciary to award custody to that third party over the parents - this paragraph expands where custody can be given to any third party with no focus on the child's immediate parents and immediate family first over all others - right of parents are eliminated, marginalized, and not even mentioned-please rethink this avenue because it will open up more abuse of discretion within the Courts and allow selective more vagueness of "best interests" to rule and reign over our children and under the color of law while eliminating the rights of children and parents. This allowance will perhaps cause more undue harnesses on families even eliminating other rights, liberties, and Federal protections under the US Constitution to decide for our families. Please review the recent Massachusetts Justina Pelletier case where an out of state Judge gave permanent custody of a Connecticut child to a third party CPS agency which also involves two warring medical facilities - one of which literally removed a child from contact with her family, from their care, from their decision making, from her families chosen physicians, from her educators, from her friends, and from her clergy.

In Conclusion: Please focus on the considerations and recommendations made by many for revising this very important Bill S.B. #494 and please listen to the urgent public calls for Connecticut Family Court Systems reform including for reforming GALs/AMCs system that we currently have in place. Please do so before more rights are eliminated and before one more family and one more childhood is destroyed by this broken system. I am a Mother, and the Defendant, Appellant, and a Self-Represented Party in a family custody case. This past year, the Court proclaimed that our family custody case is one of the largest files in the Litchfield district. I testified at the Custody Task

Force hearing on January 9, 2014 about my case and in support of reform (which I have also attached). I have orders for access for holidays, information, and for reunification that have denied and/or not been allowed to go forward. Since then, I have filed a second Appellate Appeal and like many other parents; I have not seen my daughter since August 2012.

Thank you for your time and considerations.

Respectfully Submitted,

(via email delivery to: jud.testimony@cga.gov)

Pameia D. Eiseniohr

http://www.cga.ct.gov/jud/ldcc/Testimony/January%209/Eisenlohr,%20Pamela.pdf Jan. 9, 1014

Litchfield District Family Case Name: Eisenlohr, Scott v. Eisenlohr, Pamela, LLI- FA03-0091072S Connecticut Appellate Appeals No(s).AC33390 filed 4/21/11, disposed 5/8/12, AC36302 filed 11/18/2013

http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/children/advocacy in motion.pdf (also attached as a secondary reference pdf document with this testimony)

## Task Force to Study Legal Disputes Involving the Care and Custody of Minor Children

c/o Judiclary Committee, Room 2500, Legislative Office Building Hartford, CT 08108 Email: LDCC@cga.ct.gov

### PUBLIC HEARING JANUARY 9, 2014 TESTIMONY OF PAMELA EISENLOHR

My name is Pamela Eisenlohr. I am a Mother, and the Defendant, Appellant, and a Self Represented Party in this family custody case. This past year, the Court proclaimed that our family custody case is one of the largest files in the Litchfield district.

My child and I lived together since the child's birth until nearly age 9 until temporary orders to change custody were issued December 1, 2010 along with accusations that I was alienating my child from her father. All orders in our Separation Agreement were eliminated by the Court as well. My child had walked into her school two months earlier in October 2010 after a 4 day weekend with her father and took her teacher aside after finishing a school subject lesson about the word "WORRY"; took off her shirt to show her teacher bruises, claimed that her father beat her up, and that she was "worrled" that her father would beat her up again because she was going with him that day. My child spoke this claim of fear to her teacher, school nurse, social worker, principal, music teacher. The school reported the abuse to DCF and the local police launching an investigation and reports that included from the child's doctors, Dr. Nina Livingston from the Children Medical Center, State Police, and DCF during which father agreed to DCF not to see the child until the conclusion of the investigation, also worked with mother on a safety plan. Father recanted against DCF and filed for sole custody.

A year earlier in 2009 we were ordered to a \$5000.00 evaluation with Dr. Kreiger of Connecticut Resource Group and my child's therapist at the time was Heather Paluso, PhD. Which was covered by father's insurance. Also in 2009, the GAL reported to DCF that my child was claiming to be abused by her father.

In 2010, Dr. Paluso, PhD reported to DCF that my daughter had been abused by her father. Following this, father pulled the medical releases from both my daughter's therapist, Dr. Paluso and also from Dr. Krieger at Connecticut Resource Group. Neither therapist was able to treat the child or finish the evaluation. At the time, Dr. Krieger was requesting that father finish his required testing and asked for an additional fee above the required \$5000.00 we paid out of pocket. In November 2010, the GAL filed a motion to help get our daughter back into therapy for her diagnosed anxiety and separation issues which was granted – our daughter child was ordered to undergo weekly therapy sessions with Dr. Lauren Ayr, PhD with Connecticut Resource Group, which was covered by insurance.

At the end of November 2010 and prior to DCF concluding their investigation, Judge Munro denied our referral to Special Masters in Middletown and Judge Gionocchio ordered my daughter immediately removed from my custody to temporary sole custody with father citing me with alienating my daughter from her father despite reports of abuse and discounting reports from Dr. Livingston of non-accidental bruising and did so with no report from DCF noting we had trial dates calendared. The GAL testified that she her changed she position - it had to be mom, not dad causing the child to act out. The Court citied that mom had manipulated the GAL, DCF workers, doctors, five school personnel, police and falsified a DCF report. Mom was ordered to supervised visitation with Angelo Farenga of Litchfield Visitation 4 1/2 hrs. per week and into therapy and parenting classes for months. Marcia Camp of Family Services surmised that mom was causal to father's anger actions, negatively relied on her maternal instincts, and that the child had adjusted within six weeks to father's home and to her school, and was settled speaking less and less of her maternal family. The child never changed schools and cried for months to come home to mom during visits, including mom could not get any consistent time with the child only got less and less time. The child was diagnosed with Systemic Juvenile Rheumatoid Arthritis in 2003, currently in remission - mom could not manage to ever manipulate father into giving her a current insurance card even with the GAL's helpful demand on father. To date father still has no medical insurance for the child,

is unemployed, and has gone through 7 attorneys since 2003.

The DCF report came in a month later on December 22, 2010 after the fact, substantiating both parents with emotion neglect, father refused to cooperate with his prior agreement not to see the child, safety plan in place, mom wants child in the apy, DCF did not remove the child from mom's care.

in January 2011, Judge Gionocchio recused himself after father introduced our daughter to him at a TJ-Max and thanked him for giving him custody. Judge Danaher took over our case and ordered a continuance of 3 months at father's insistence to March 2010 pending a report from the child's new therapist, mother's therapist Dr. Heath, PhD was criticized for her report favoring concern for the child being removed as a harmful "draconian measure" and for mom to have increased time with the child. Father had refused an invitation to meet with Dr. Heath, PhD. mom and child. The Court suggested that mom change therapists, father and GAL demanded a change of therapists. The calendared trial dates disappeared and the case "morphed" into something else. Mom changed to Dr, Michela Kauffmman also of Connecticut Resource Group who requested the testing records from Dr. Krieger via interoffice. Dr. Krieger evaluation records request was denied to mom's therapist and also to mom at a later request as being court sealed, for which I have no record of any sealing. Dr. Kauffmann re-tested mom finding no issues, discharged mom, and wrote a favorable report to the Court mom to have increased time with her child.

In March 2011 a hearing was held. On April 1, 2011, Judge Danaher having agreed with Judge Gionocchlo that mom was manipulating several professional individuals including the GAL and Judge Glonocchio, also caused DCF investigations, unnecessary doctor exams, and caused the child to draw abusive drawings of father and finalized sole physical custody to father with reduced supervised visitation for mom now with Thomaston Counselling, reduced to 2 1/2 hours per week and further ordered no filling of motions for 6 months under Taft v. Bettcher. There was no report from the child's therapist until months after the custody switch. Dr. Ayr, PhD reported it's just the child's personality and that she pendulums between parents, including many months later in December 2011, recommending reunification for the child and her mom for the Mother/Daughter relationship also provided a list of appointments showing numerous cancellations by father often with months between scheduled actual face time appointments. One month later in April 2011, father was arrested for a domestic assault against his second wife, for injuring her, and stealing her car. The GAL voiced no concerns that father's behavior and his arrest affected our child who was now living with her Father. Father's second wife retracted her story to Torrington police and voiced her anger at police for arresting her husband as reported in published by the Waterbury Republican and the Register Citizen newspapers. The silence from the GAL, Family Evaluator, and the Court was deafening!

The Child and mom had a very close and loving Mother/Child relationship and visits went well when they occurred regularly. However, since the custody change and Court orders April 1, 2011; the father has changed therapists and/or agencies at least five times since 2011 including father has delayed/refused releases and/or refused recommendations, communications, and disallowed mom and child access to each other including that the Court denied multiple motions as "vexatious" in mom's attempts to salvage her relationship with the child thus leaving the child and mom in dire straits with no consistent access time to each other and for unreasonable prolonged periods including for the last 17 months, since last August 2012. The child is angry and acts out against mom and family and friends. In many documents and reports given to the Court previously; various therapists, agencies, Family Services, and the child's guardian ad litem have made it clear that the Mother/Daughter relationship is important for the child's welfare and normal development and that reunification for the Mother/Child is in child's best interests; the Court so order it in March 2012 in the child's best interests.

There is nothing in the record to show that visits between Child and Mother cause harm to either nor is there anything in the record from any therapist or visitation supervisor, Guardian ad litem, Family Services or from the Court to indicate that such Mother/Daughter relationship should not continue, that it was not beneficial or contrary to the child's best interests or have such visits revealed that mom had any negative

parenting skills or that mom caused any negative behaviors in the child. Father and/or attorneys have become "gate keepers" to block mom access to the child, control the orders, control agencies role/decisions, interfered with and/or eliminated agencies, and also when father expressed opposition with all therapist/agency credentials, and with scheduling issues with each visitation agency, and with threatening police intervention against the agencies, and including the father's continued protests with agencies roles and responsibilities, and with going against the agencies and against mom for keeping agencies roles and responsibilities, and with going against the agencies and against mom for keeping consistent time with the child and for keeping personal connections, holiday dates, and for exchanging consistent time with the child. The Court has also cited several times including in the Ruling of gifts and memorabilia with the child. The Court has also cited several times including make a quotient March 20, 2013, that the problems are minor issues, that we two parents, primarily mom has quotient disagreements with father, as not being cooperative, and the child is occasionally misbehaving.

in March 2012, mom sought to modify orders to add reunification therapy for the Mother/Child relationship in addition to parenting time with the child. Father has repeatedly sought to modify the April 1, 2011 orders against mom's time with the child. The GAL reported among other issues in her court ordered Investigation report, December 2012 that the mom refused to give the family cat to the child. Thereafter In March 2012, Ms. Gorra, MS LMFT, of Thomaston Counseling, testified in favor of mom and also to oppositional and problematic issues with Father and Stepmother including concerns for the child, her anxiety, parental conflict, also reporting that she was told by the Father in session with the child, that he and his wife were denying the child her cat "...the cat was not going to their house..." referencing her report dated January 5, 2012 and many other reports given to the Court prior, all the while Father and his wife deliberately mislead the child, mom, including the supervisor, for months. Ms. Gorra, also testified that Father and Stepmother refused to allow mom to give the child her birthday glifts, or allow mom other personal connections with the child. Ms. Gorra further reported that Father and Stepmother had threatened police intervention with claims that she was holding the child against her will including that the child was privy to custody information that was harmful to her view of her mom. Ms. Gorra and recommended "Reunification Therapy" agreeing with the child's therapist Dr. Ayr, PhD. because this has had a negative ripple effect on the child and with her relationship with her mother. The GAL was prior ordered in December 2011 to investigate issues with Thomaston Counseling and the child's reactions was also heard - the GAL recommended reunification combined with visits for the child's deteriorating relationship regardless of why it was happening. Father was also in opposition with Ms. Gorra's credentials, her not being a "PhD", questioned her conduct, and employment with Thomaston Counseling including that Father had requested to reduce Mother/Child time and another change to a third agency. which was granted even though the Court cited the parents' conflict and child's misbehavior. In the Court orders dated March 20, 2012; Judge Danaher, III Indicted that the child misbehaves and that the parties should be able to work together on simple routine issues. The Court ordered to reunification services for daughter and mother with Laura Erhrdt of Visitation Solutions for only 1 hour per week. Within 1 month; Laura Erhardt reported that she does not do reunification and made alternate recommendations reunification. She would stay on as a supervisor. Father refused to acknowledge the orders for reunification for over a year and refused to allow any change in therapist. In September 2012, Laura Erhrdt ended her services until the parents could agree to do right by their child recommending that the child undergo EMDR trauma therapy. Father refused.

The Court thereafter, denied to calendar several other motions filed by mom in her efforts to salvage her relationship with the child and placed further restrictions against the defendant for access and to file motions – often for 6 months at a time under *Taft vs Bettcher*. A year later, at a "reargue" hearing in April 2013, Judge Danaher inquired as to the status of the Mother/Child reunification. Mom testified that the Mother/Child reunification had not yet occurred due to Father's refusal to allow it which brought about Court orders to proceed with reunification for mother and daughter dated April 23, 2013 and subsequent Court orders to proceed with reunification for mother and contempt against father for denying orders July 16, 2013 after mom filed Court motions for orders and contempt against father for denying orders July 16, 2013 after mom filed Court motions for orders and contempt against father for denying orders. The Court denied EMDR trauma therapy and any other favorable recommendations to mom access. The Court denied EMDR trauma therapy and any other favorable recommendations to mom given by supervisors. The child's therapist Dr. Ayr, PhD had released the child in November 2012 without given by supervisors. The child's therapist Dr. Ayr, PhD had released the child did not want to go issue other than the child's reactions were secondary to parental conflict, and the child did not want to go issue other than the child's reactions were secondary to parental conflict, and the child did not want to go issue other than the child's reactions were secondary to parental conflict, and the child did not want to go issue other than the child's reactions were secondary to parental conflict, and the child did not want to go issue other than the child's reactions were secondary to parental conflict, and the child did not want to go issue other than the child's reactions were secondary to parental conflict.

reunification "at this age" for the child and it is not her role to determine the causes. The child is eleven. The Court further wrote to deny mom's motions for "reargue" refusing a Parallel Parenting Plan, denied any further evaluation with Mr. Frigon Including the Court denied avenues to salvage her relationship with the child, set schedules for access, and to minimize parental conflict summarizing in his decision that it is somehow too late, caused by mom's actions, and that mom is trying to destroy father's marriage. There are Court orders in place. Mom's telephone calls to reach her child are call blocked to father's cell phone of record since July 2013, Christmas was denied, and the child stated on January 8, 2014 that she has not received Christmas cards and gifts sent to her from family and friends. In review of Gardeners' PAS theory checklists, this would be reverse parental alienation, Gate keeping, and likely the less friendly parent.

A Guardian ad litem, Dina Menchetti, is assigned to this case, since July 2008; however, mom is not aware that the GAL has been directly involved with the child during the first year after the custody change nor since her Court ordered Investigation report dated December 2011 including the GAL did not interview mom. Father cancelled his appointment with the GAL for that ordered investigation. The GAL based her investigation on emails between Mother and Father and also after her extensive review of mom's therapy file (which she obtained neither without mom's knowledge nor by mom's signed release). The GAL had telephone discussion with mom's therapist (the therapists comments and reports were favorable for mom to have parenting time with her child, released mom without concern and with favorable recommendations to the Court including the therapist expressed opposition and past documented anger issues on the part of Father as being problematic for mom to have a relationship and make new memories with the child). I have never abandoned my daughter, nor have I been declared an unfit parent. The GAL has been notified since that the child has not had any personal face time contact with her mom for 17 months since August 2012.

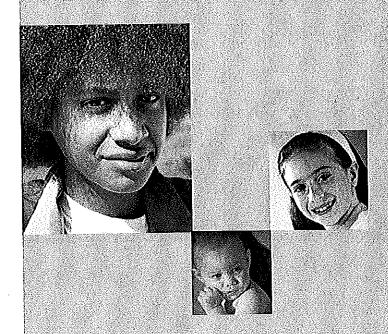
In 2012, the Court asked the GAL if she wanted to be released from our case -she declined. The GAL did not attend three scheduled hearings in April 2013, July 2013, and October 2013. To date I owe the GAL \$ 22,475.83.

The Family Court System here and across the country destroys families as it operates now and the complaints from families will keep coming, demanding reform, in the "Best Interest" their children. My case may seem small, even "low level" in the big picture of Family Court chaos, delays, denials, destroyed lives and eliminated bank accounts in comparison to other cases brought to light at this hearing but it is just as painful and unreasonable.

Children will only ever have one mom and one dad and deserve to "FOREVER" have both parents in their lives over any "quotient disagreement" parents may have between them. In cases of "Parental Alienation" accusations or insinuations such as is my case, then it is the parents that need be separated from each other (I) not for Courts to resolve parental accusations or disagreement issues by ripping a child away from their home or from their securities of parental and family ties including that standards for "Family Reunification" plans and progression must be clearly defined and overseen in such deplorable cases where Family Courts have allowed children to continue to be separated from parents for weeks, months and even years as in my case; My daughter and I have not seen each other for well over a year. For example; there are "Parallel Parenting Plans" designed to disengage parents from each other, eliminates "high conflict", and includes both parents in the lives of their children while insuring the children have consistent contact, balance, and a home base with both parents. DCF and Correctional Facilities have clearly have better "Family Reunification" plans and definitions then does the Family Courts offer for those families that are not involved with DCF or have an open case with DCF, or for parents that have not been convicted of any crime, or for those that lack insurance coverage or are indigent, or otherwise plagued with delays and continuances through the Courts. The Family Courts harm and wrong familles to color the "Best Interests" standards and/or to pick and choose through the "Best Interests" standards to meet the best interests or an observation of the day (since the last order) is a wrongful "Catch 22" against children's best interests for their long term welfare. Children do not stay Children forever. Childhood is brief and very fragile and only loaned to us for a short while.

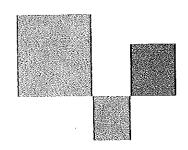
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# Advocacy in Motion

A GUIDE TO IMPLEMENTING THE Standards to Govern the Performance of Guardians Ad Litem for Children

#### COURT IMPROVEMENT PROGRAM

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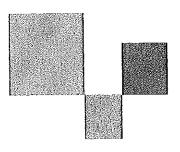


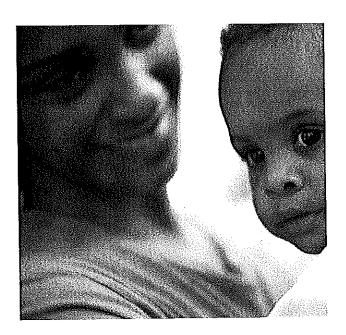
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Hon. Deborah V. Bryan, Judge, Virginia Beach J&DR District Court
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Hon. Thomas P. Sotelo, Judge, Fairfax J&DR District Court
Leslie A.T. Haley, Assistant Ethics Counsel, Virginia State Bar

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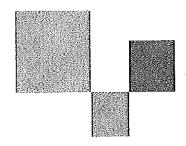
The role and responsibility of the GAL is to represent, as an attorney, the child's best interests before the court. The GAL is a full and active participant in the proceedings who independently investigates, assesses and advocates for the child's best interests.

- Introductory Comment, Standards to Govern the Performance of Guardians Ad Litem for Children



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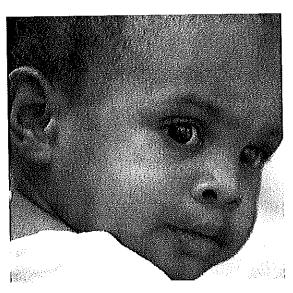


#### Purpose

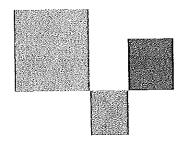
The Standards to Govern the Performance of Guardians Ad Litem for Children ("Performance Standards") were approved by the Judicial Council of Virginia in June 2003, reviewed by the Supreme Court of Virginia in July 2003 and became effective September 1, 2003. The Performance Standards were designed to address case types in which the trial courts appoint guardians ad litem for children (GAL), and to provide for a comprehensive approach to best practices for child representation. The purpose of this Guide is to provide attorneys serving as a GAL with practice tips to assist them with keeping advocacy in motion. The effective and efficient implementation of the Performance Standards helps ensure that the best interests of the child are appropriately represented. The practice tips are not required procedures for GALs.

In addition to the practice tips provided, this Guide includes ethical considerations attorneys should be aware of when serving as a GAL. It also provides a description of when a GAL should or may be appointed by the juvenile and domestic relations district court or circuit court; the duration of the GAL's appointment; and the duties and authority of the GAL as provided in Rule 8:6 of the Rules of the Supreme Court of Virginia, the DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, and the selected judicial opinion, Stanley v. Fairfax County Department of Social Services. Information on how attorneys maintain their GAL qualification, as well as information about GAL compensation and the compensation of experts, is also included.

Finally, in an effort to assist GALs with reporting their efforts to comply with the Performance Standards to the court, a sample "Guardian Ad Litem Performance Standards Checklist" has been developed. Use of this checklist is left to the discretion of the GAL.



However, it is recommended that GALs contact the courts in which they serve and inquire about any requirements the court may have for reporting compliance with the Performance Standards.



## Appointment of Guardians Ad Litem

The appointment of a guardian *ad litem* (GAL) by a juvenile and domestic relations district court is mandatory in certain cases and permissive in others. Virginia Code § 16.1-266 provides that a juvenile and domestic relations district court shall appoint a GAL in any case involving a child who is:

- alleged to be abused or neglected.
- the subject of an entrustment agreement.
- the subject of a petition seeking termination of residual parental rights.
- the subject of a proceeding where the parent(s) seeks to be relieved of the child's care or custody.

A juvenile and domestic relations district court shall also appoint a GAL in cases involving a child who is:

- the subject of a foster care plan review or a hearing to review the child's status in foster care. § 16.1-281.
- seeking emancipation. § 16.1-332.
- the subject of a proceeding by parents seeking to commit an objecting minor,
   14 years of age or older, to a psychiatric facility. § 16.1-339.
- the subject of a petition for involuntary commitment. § 16.1-341.

The court may appoint a GAL in other cases, which in the discretion of the court require a GAL (§ 16.1-266). These include certain custody cases where parents or persons claiming a right to custody are represented by counsel (§ 16.1-266), as well as those cases in which a petition is filed by a juvenile seeking judicial authorization for a physician to perform an abortion (§ 16.1-241).

The circuit court may appoint a GAL for a child in a custody, visitation or support case being litigated incident to divorce proceedings. The circuit court is authorized by § 16.1-266 to appoint a GAL in appeals of cases from the juvenile court (§ 16.1-296 l).



Virginia Code § 16.1-268 provides that the attorney appointed as a GAL for a child "shall represent the child...at any such hearing and at all other stages of the proceeding unless relieved or replaced in the manner provided by law." Standard J of the Performance Standards contemplates the GAL continuing representation of the child through the conclusion of any appeal. This is supported through amendments to the Rules of the Supreme Court of Virginia, which provide for GAL participation in the appellate process. (See Rules 5A:1, 5A:19, 5A:24 and 5A:28.) Please note that upon learning of an appeal to the circuit court, it is the responsibility of the attorney appointed to serve as the GAL in the juvenile court to seek a new appointment as the GAL in the matter appealed to the circuit court. Similarly, reappointment as a GAL should be sought in any appeal to the Court of Appeals of Virginia or the Supreme Court of Virginia.

## Duties and Authority of Guardians Ad Litem

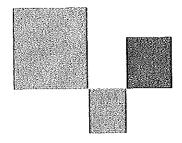
In addition to the *Performance Standards*, the following sources give rise to the duties and authority of the GAL.

• Virginia Supreme Court Rule 8:6 - The Roles of Counsel and of Guardians Ad Litem When Representing Children.

Rule 8:6 provides that "When appointed for a child, the guardian ad litem shall vigorously represent the child, fully protecting the child's interest and welfare. The guardian ad litem shall advise the court of the wishes of the child in any case where the wishes of the child conflict with the opinion of the

guardian ad litem as to what is in the child's interest and welfare." [Emphasis added.]





• D C-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM

This Order provides that the GAL is appointed "to protect and represent the interests of [the child] in connection with all proceedings involved in the matter[,]" and orders that the GAL "perform the duties and have access to the parties and documents specified on the reverse and incorporated by referenced into [the] order." (See page 54 for a full copy of the Order.)

Virginia State Bar Legal Ethics Opinion 1729 (1999) addresses those duties "incorporated by reference" as follows:

- 1. Represent the child in accordance with Rule 8:6 of the Rules of the Supreme Court of Virginia.
- 2. Advise the court relative to the following: (a) the results of the guardian ad litem investigation of the case; (b) the guardian ad litem recommendation as to any testing necessary to make an effective disposition of the case; (c) the guardian ad litem recommendation as to the placement of the child and disposition of the case; (d) the results of the guardian ad litem monitoring of the child's welfare and of the parties' compliance with the court's orders; (e) the guardian ad litem recommendation as to the services to be made available to the child and family or household members.

The Order also authorizes the GAL "to appear at the Family Assessment and Planning Team and at panel review hearings conducted by the local department of social services pursuant to § 63.2-907."

• Judicial Opinion.

Stanley v. Fairfax County Department of Social Services, 242 Va. 60, 62, 405 S.E.2d 621 (1991). Provides that a GAL can file "affirmative pleadings necessary to protect the ward's interest."

Please review the above-referenced opinion for additional information.

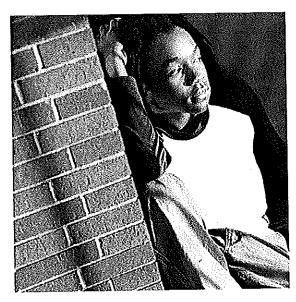
## About the Performance Standards

These standards apply to all attorneys serving as guardians ad litem for children in child protection<sup>1</sup>, custody and visitation, juvenile delinquency, child in need of supervision, child in need of services, status offense and other appropriate cases, as determined by the court, in juvenile and domestic relations district courts, circuit courts, the Court of Appeals and the Supreme Court of Virginia. These standards augment the policies governing the qualification of attorneys as guardians ad litem.

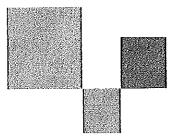
#### Introductory Comment:

Many of the competencies required to represent children are the same as those required for many other types of litigation. There are skills, abilities and actions expected of attorneys in all cases such as conducting interviews, framing and evaluating pleadings, engaging in discovery techniques, thoroughly preparing for trial, and negotiating on behalf of a client. These skills are of equal importance to other types of civil cases such as labor, tort, contract or family law. The need for practices such as comprehensive client interviews is present in every case. Likewise attorneys involved in any form of litigation must make choices and determine strategic options. For example, the need to interview non-parties depends on the nature of the case and the litigator's goal. Hence, qualifying phrases like "as appropriate" or "in so far as possible" are found in several standards and commentaries.

Representing children, however, is also different from other forms of litigation. The importance of the dispositional process and the potential for court proceedings to



"Child protection cases" includes cases where a public or private child welfare agency is involved and concern children who are the subject of any of the following petitions: child abuse or neglect; child at-risk for abuse or neglect; approval of an entrustment agreement or for relief of custody; foster care review; permanency planning and termination of parental rights.



affect the very nature of a family provide the basis for these distinctions. The long-term consequences to the child client make the role of a guardian ad litem (GAL) as crucial at the dispositional stage as at any other phase of the case. These consequences demand full attention to the formulation and articulation of well-supported arguments and appropriate recommendations, as well as critical evaluation of plans proposed by others.

The GAL acts as an attorney and not a witness, which means that he or she should not be cross-examined and, more importantly, should not testify. The GAL should rely primarily on opening statements, presentation of evidence and closing arguments to present the salient information the GAL feels the court needs to make its decisions.

The implicit set of checks and balances operative in non-juvenile cases is generally not likely to work for children. In a civil action involving adults, the successful party knows when a judgment is paid or a court order is implemented. In proceedings involving children this may not be so; the child may be too young to understand or monitor orders, or the legal proceedings may be too complex for the child to understand. Thus, these standards incorporate provisions regarding communication with the child, the implementation of orders and appeals.

Attorneys who serve as GALs are subject to the Rules of Professional Conduct promulgated by the Virginia State Bar as they would be in any other case, except when the special duties of a GAL conflict with such rules. For example, an attorney would follow the general conflict rule (1.7) to determine if there would be a possible conflict of interest if the attorney served as GAL. But unlike the Rules for Professional Conduct as they apply to confidentiality, there may be times when attorneys serving as a GAL must, in furtherance of their role as GAL, disclose information provided by the child to the court. A GAL appointed to represent siblings should be alert to potential conflicts and, when appropriate, request that the court appoint a separate GAL for each child.

The role and responsibility of the GAL is to represent, as an attorney, the child's best interests before the court. The GAL is a full and active participant in the proceedings who independently investigates, assesses and advocates for the child's best interests. Decision-making power resides with the court.

In fulfilling the duties of a Guardian ad litem (GAL), an attorney shall:



## A. Meet face-to-face and interview the child.

COMMENT: The first duty of the GAL is to establish a relationship with the child client, as an attorney would with any client. This interview should be conducted face-to-face at a time and place that allows the GAL to observe the child and ascertain: the child's wishes, the safety and adequacy of the child's current placement, and the need for further testing, evaluation or interim judicial relief. Such interviews are best conducted on a date prior to the first court appearance and at a location other than the courthouse. It is important to meet with the child in a private setting, such as the GAL's office, the child's home, school or placement, away from the litigants so that the child can talk openly.

There should be sufficient time between the interview and court appearances for the GAL to fully analyze the information gleaned, take appropriate actions and formulate meaningful arguments and recommendations.

The content and direction of the interview should take into account the child's age, maturity and potential stress created by the circumstances of the case and prior interviews, especially in cases involving allegations of sexual or other abuse. In such cases, GALs should rely upon videotapes of forensic interviews or attend interviews of the child conducted by trained experts rather than conducting their own independent investigation and interviewing the child about the facts of their alleged victimization.

As appropriate, children should be encouraged to articulate their concerns and views. In custody and visitation cases, care should be taken so that the child never feels compelled to state a preference or choose between parents or placements.

In juvenile delinquency, child in need of supervision, child in need of services, and status offense cases, the GAL should exercise caution when talking to the child about the circumstances of the offense and advise the child about the limitations on confidentiality that may apply.

Young children present a challenge, but the age and verbal ability of the child do not abrogate the responsibility to meet face-to-face with the child. In meetings with young children, and with children with limited language abilities or those with disabilities, the GAL will rely much more heavily on observation. Conducting such meetings at the child's home or placement allows the GAL to observe the surroundings and the child's interactions with others, as well as to interview the child's caretaker.

If the child expresses wishes that are contrary to the GAL's assessment of the child's interests and welfare, the GAL is obligated to inform the court of these wishes. If appropriate, the GAL should request that an attorney be appointed to serve as counsel for the child. If the child is uncooperative or appears to have been influenced by a parent or custodian, the GAL should inform the court of these circumstances.

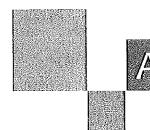


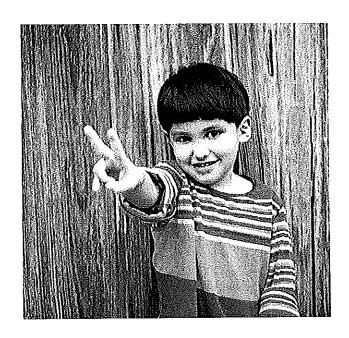
- Prior to interviewing the child, speak with professionals (i.e. teacher(s) or other school officials, school guidance counselor, daycare provider(s), doctors, mental health or other health professional(s)), as appropriate, who have worked with the child. This provides the opportunity to learn about the personality and presentation of the child and any emotional, mental or physical limitations that might impact the interview process. If necessary, ask those professionals to assist with the interview.
- For younger children, be willing to "get down" on their level and build a rapport with them. Pose questions in a non-threatening manner, using concrete terminology and focused, open-ended questions that will allow the child to tell his/her story. For example, it may be appropriate for the GAL to:
  - Keep in his/her office, a basket of toys, drawing/coloring paper, coloring pens/pencils, or games to use with the child.
  - Keep in his/her office, child-appropriate drinks and foods (i.e. animal crackers, juice boxes). (Note: Before giving food to a child, always seek permission of the parent/caretaker.)
  - Create an area in his/her office that provides space to get down on the floor with the child to play and talk. It may be helpful for the GAL to avoid uncomfortable environments for the child, which may prevent open communication (i.e. the hallway at the courthouse), as well as barriers between himself/herself and the child (i.e. a desk).
  - Ask questions that begin with who, what, where, when, why, and how. Avoid suggesting answers in questions. As the attention span of younger children is less than older children, avoid long interviews. Have multiple meetings with the child of smaller duration in multiple settings (i.e. the GAL's office, the child's school, the child's therapist's office, the child's home).
  - Reaffirm to the child where the parent/caretaker will be waiting when taking the younger child to the interview room.
  - Orient the young child to the office environment by showing the young child and parent/caretaker around and, where appropriate, making introductions. This may help the child feel more comfortable.



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- For older children, be tolerant of pauses and silences. A child may sometimes come to a complete stop in narration just before expressing deep feelings or revealing important facts. Consider communicating to the older child that he/she will not be required to hand over his/her "loyalty card" for a parent/caretaker.
- Be willing to allow questions to go unanswered. Do not force the older child to answer. Likewise, because the child "said so" does not necessarily make it so. Similar to the younger child, use openended questions that will require the child to give particularized facts that can be investigated and validated by collateral sources. It may also be appropriate for the GAL to:
  - Meet with the child in his/her office, the child's school, the child's therapist's office, or the community (i.e. with the parent's/caretaker's permission, take the child to eat at a local restaurant).
  - Advise the older child of when the child and GAL will meet again. If any representations are made to the child, followthrough. If it is necessary to miss a meeting, let the child know beforehand. Doing so will build trust.
  - Avoid the appearance of drawing a judgment based upon an older child's answer. Listen as opposed to speaking. Be genuine.
- Be aware of any speech, cognitive or emotional limitations/ challenges that may limit the child's ability to communicate and, when necessary, speak in simple sentences, even if the child is a teen.
- Never forego the interview process, even if a child is unable to communicate verbally. Conduct the meeting at the child's home, other placement, daycare facility, therapist's office, or in the community to observe the child's surroundings and interaction with others. As previously suggested, ask professionals to assist with the interview to ensure a proper determination of the child's wishes and the child's best interests.
- Interview the child at various stages of the court process, not only prior to court appearances. This will provide an opportunity, as indicated in Standard C, to monitor the child's welfare and the parties' compliance with court orders.
- ☐ Follow the requirements provided by Standard C and Standard K when communicating with the child.





Young children present a challenge, but the age and verbal ability of the child do not abrogate the responsibility to meet face-to-face with the child. In meetings with young children, and with children with limited language abilities or those with disabilities, the GAL will rely much more heavily on observation. Conducting such meetings at the child's home or placement allows the GAL to observe the surroundings and the child's interactions with others, as well as to interview the child's caretaker.

- Comment, Standard A



**B.** Conduct an independent investigation in order to ascertain the facts of the case.

COMMENT: The GAL shall review any and all relevant records, which may include court, social service, medical, mental health, and school records. The GAL should attach a copy of the Supreme Court of Virginia's Form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, to any written request for records since it delineates the statutory authority for access to records.

The GAL shall interview the parties to the dispute and any other persons with relevant knowledge of the child and the facts that gave rise to the allegations. Such other persons would include, for example, the child's parents, current caretaker including foster parents, an assigned Court-Appointed Special Advocate (CASA) worker, social worker, child care provider, clergy, neighbors, relatives, school personnel, and health and mental health providers. When the child is young, there is a greater need to seek independent sources of information and obtain verification of salient facts. Such interviews are best conducted on a date prior to the court appearances and at a location other than the courthouse.

GALs should communicate their role and responsibilities clearly to the parents and/ or other party's attorneys including the GAL's legal status in the proceeding and responsibility to participate fully to protect the child's interests and express the child's wishes.

In juvenile delinquency, child in need of supervision, child in need of services, and status offense cases, the GAL should contact the child's defense attorney.

There should be sufficient time between the interview and court appearances for the GAL to fully analyze the information gleaned, take appropriate actions such as issuing subpoenas, filing motions for temporary or protective relief or appointment of an independent expert to evaluate the child, and formulate a meaningful strategy.

If the home environment is at issue, the GAL should visit the child's home and any proposed alternative placement.

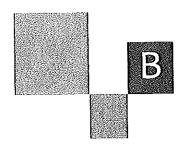
GALs should independently evaluate all allegations of child abuse or neglect, or of risk to the child's safety or welfare, including but not limited to physical or mental abuse, sexual abuse, lack of supervision, educational neglect, and exposure of the child to domestic violence or substance abuse, regardless of whether such abuse or neglect or risk is identified in the parties' pleadings.

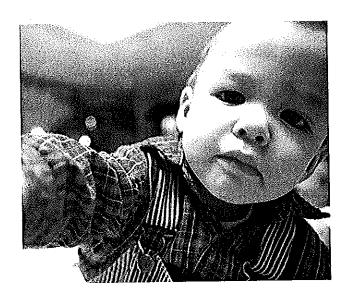
#### PRIVAYCHYO E HIPS

- ☑ Consider developing processes, procedures, and protocols that evidence neutrality and that will be employed in each and every case upon appointment. Be open-minded and willing to adapt these processes, procedures and protocols to the needs of a particular case. For example:
  - Create a form introductory letter that may be sent to all parties involved in the case. Include contact information, a description of the GAL's role in the process, and a request that each party be in contact with the GAL to schedule a meeting. It may also be helpful to include a copy of the DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, received from the court.
  - If a party is represented by counsel, contact the attorney and determine the type of access that will be allowed to his/her client (i.e. open-ended communication without a need to contact counsel, communication with counsel present, etc.).
  - Create a tickler system for sending follow-up correspondence to individuals who do not make the requested contact.
  - In the initial meeting with the parties, explain what the role of the GAL is and is not, and the processes that will be employed to perform that role.
- Review the court file for the reason(s) a petition was filed with the court, and to determine if previous petitions involving the child client have been filed and whether any adjudications have been made involving the child, any siblings, or any of the parties to the case. The intake summary/statement may contain the identity of witnesses or sources of documentary evidence.
- As part of the independent investigation, review, at a minimum, the following:
  - · Initial report of abuse.
  - Initial intake report.
  - Reports by agencies mandated to investigate to gather information.
  - · Agency follow-up reports.
  - Police reports.
  - Medical, psychological and/or psychiatric evaluations and home studies.
  - Central registry records of founded child abuse and neglect reports.
  - Photographs, x-rays, and other medical information.
  - School records (including attendance or disciplinary records).

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- Present a copy or certified copy of the DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, when requesting records from state and local agencies, health care providers, etc., because the agency or provider may require this authorization to release the requested records. If necessary, a subpoena duces tecum may be issued by the attorney, or, upon motion, be issued by the court.
- Interview persons who have a relationship with the child. Such persons may include, but not be limited to, relatives (i.e. the child's parents, grandparents, and siblings), current caregiver (i.e. foster parents), friends, neighbors, social worker, mental health care providers, teachers, coaches, clergy, and CASA. Prior to interviewing the parents, determine if they are represented by legal counsel and obtain any necessary permissions. Be willing to meet with a party in the presence of that party's counsel.
- Do not hesitate to request assistance from experts. The Virginia Code specifically authorizes the court to order psychiatric, psychological and physical evaluations of a child alleged to have been abused, the child's siblings, and the parents or guardian.
- As provided in Standard I, contact the CASA volunteer assigned to the case and coordinate all aspects of the investigation with him/her. CASA can offer significant information and assistance to the GAL, such as interviewing hard-to-reach witnesses. CASA may also be able to supplement information gathered by the GAL. Meeting the child with the CASA may also be appropriate.





The GAL shall interview the parties to the dispute and any other persons with relevant knowledge of the child and the facts that gave rise to the allegations. .... There should be sufficient time between the interview and court appearances for the GAL to fully analyze the information gleaned, take appropriate actions such as issuing subpoenas, filing motions for temporary or protective relief or appointment of an independent expert to evaluate the child, and formulate a meaningful strategy.

- Comment, Standard B



**C.** Advise the child, in terms the child can understand, of the nature of all proceedings, the child's rights, the role and responsibilities of the GAL, the court process and the possible consequences of the legal action.

COMMENT: The GAL shall make every effort to ensure that the child understands, by using language appropriate to the child's age and verbal abilities, the nature of the proceedings, the consequences which may result, the possibility of future modifications, the attorney's responsibilities as a GAL, and how to contact the GAL. If the child has significant emotional problems, the GAL should consult with a mental health specialist or the child's therapist in order to determine the best manner to present this information.

In juvenile delinquency, child in need of supervision, child in need of services, and status offense cases, the GAL should explain how the GAL's role and responsibilities differ from that of the child's defense attorney and advise the child about the limitations on confidentiality that may apply.

The GAL must inform the child that there may be circumstances when confidentiality will apply to communication between the child and GAL, and circumstances when it may not. The GAL may use information received from the child to further the child's best interest. For example, the GAL may learn from the child that a custodian is taking illegal drugs and may use that information to request that the court order drug testing of the custodian.

The GAL should keep the child apprised of any developments in the case and actions of the court or parties involved. The GAL shall maintain meaningful contact with the child throughout the term of the case to monitor the child's welfare and the parties' compliance with court orders.



- When speaking with the child, use age appropriate language and communicate in terms he/she can understand. Avoid the use of legal terminology. If necessary, use diagrams and put information on paper to help the child understand possible options and outcomes.
- Explain to the child the GAL's role of representing the child's best interest. For example, compare and contrast the role of the GAL with that of the child's attorney, if applicable, or the role of the child's parent's attorney.
- Explain to the child the GAL's responsibility to inform the court
  of the child's expressed wishes, if such are contrary to the GAL's
  determination of what is in the child's best interest. Ask if there is
  anything he/she would like communicated to the court.
- Explain the term "confidentiality" to the child and let the child know that there may be instances in which information provided by the child may not remain confidential.
- Speak with the child before and after court proceedings; before to let the child know what is expected to happen during the proceeding and after to inform the child of (or if the child is present, clarify for the child) any court rulings and service requirements (i.e. visitation with parents or siblings).
- Bear in mind that a child may be aware of an upcoming court proceeding. Waiting until the last minute (i.e. right before court) to speak with the child will not help the GAL's rapport with the child.
- While continuances are possible, they can be very upsetting to a child who is expecting the court to make a final decision at a particular proceeding. Continuances should be avoided, unless granted under extenuating circumstances.
- Provide the child and, if necessary, the child's caregiver, with current contact information (i.e. phone number, e-mail address, mailing address, etc.). Business cards are a great way to provide current contact information, and they can be given out after every meeting. This is essential for children because they often lose or easily misplace things.



**D.** Participate, as appropriate, in pre-trial conferences, mediation and negotiations.

COMMENT: The GAL should be involved, as appropriate, in all pre-trial conferences and negotiations including phone calls, formal or informal conferences and mediation. Additionally, the GAL should take any action necessary to attempt to resolve the case in the least adversarial manner possible; however, a GAL should clarify, when necessary, that he or she is not acting as a mediator.

The GAL's role in such meetings is to represent and advocate for the best interests of the child. A GAL who participates in mediation is bound by the confidentiality rules governing mediation as found in § 8.01-576.10 of the Code of Virginia. As a general rule, the GAL should encourage settlements. In exceptional cases where the GAL reasonably believes that a proposed settlement would be contrary to the welfare of the child, the GAL should first discuss these concerns with the parties and their counsel. If these concerns are not addressed, the GAL should bring the facts that led to the concerns about the settlement to the court's attention by filing a motion to vacate the agreement in accordance with § 8.01-576.12 of the Code of Virginia. Any proposed settlement which is deleterious to the child should be opposed despite the agreement of the other parties.

- Be an active, not passive, participant in the child's case by attending, as appropriate, pre-trial conferences, mediation sessions, and other negotiations or meetings to ensure the child's best interests are represented. Standard I references other negotiations and meetings involving legal, educational (i.e. school disciplinary and Individualized Education Plan (IEP) meetings and parent-teacher conferences) and therapeutic issues (i.e. Family Assessment and Planning Team (FAPT) and other service coordination meetings) that the GAL may attend, as such are appropriate to the child's needs and consistent with the direction of the court.
- Participate in Family Partnership Meetings (FPM) arranged by the local department of social services. The Virginia Department of Social Services (VDSS), as part of the Children's Services System Transformation, implemented FPM as the family engagement model in Virginia. As a party appointed by the court to represent the child's best interest, the GAL should be invited to the FPM. If the GAL is invited to attend the FPM but is not available, the meeting may go forward, particularly if the date scheduled is convenient to the child's family. However, the GAL may provide comments prior to the meeting and request that he/she be notified after the meeting of any decisions or plan of action impacting his/her client.
  - If the GAL is not being invited to these meetings, he/she may speak with the social worker assigned to the child's case or, if necessary, the social worker's supervisor.
- B Review any settlement and/or mediation agreements developed by the other parties to ensure the provisions are in the child's best interest. Note any concerns with the agreement to the parties and, if not addressed, inform the court of the concerns.



Ensure the child's attendance at all proceedings where the child's attendance would be appropriate and/or mandated.

COMMENT: In so far as possible, the GAL should assure the meaningful participation of the child in all phases of the proceedings which would include attendance at appropriate court hearings.

The GAL should consult the child, caretaker, therapist and any other relevant individuals to determine the appropriateness of the child's attendance at a hearing. A decision to exclude the child from a hearing should be based on a particularized determination. In making this determination, the GAL should consider the age, maturity and desires of the child; the purpose of the hearing; the advice of those consulted; and the potential risk of trauma to the child evoked by such attendance.

In cases when the child has the right to attend hearings, the GAL should ensure that the child is informed of that right. As appropriate, the child should be provided sufficient information about such hearings to make an informed decision about whether to attend.

- Ensure the child's meaningful participation in court proceedings.
  Depending upon the child's age, the GAL is the child's voice in court proceedings.
- Advise the child of his/her right to attend court proceedings. In doing so, inform the child of the nature of the court proceedings, as required by Standard C, to allow the child to make an informed decision as to whether he/she wants to attend the court proceeding.
- When determining whether a child should attend a particular proceeding, consider the child's age, maturity, and wishes, as well as information received from persons consulted, such as mental health professionals, and the purpose of the court proceeding.
- If the child attends a court proceeding, considering the child's age and development level, try to prevent the child from having to wait for long periods of time for the proceeding. It may be appropriate to ask the court to take into account the reasons for the child's attendance first and allow the child to leave.
- If the child would like to provide input at court proceedings but is not comfortable attending, recommend that the child write a statement to the court to communicate his/her wishes. If the child cannot miss school to attend court, suggest the proceeding be scheduled at a time that would not interfere with the child's school day.
- If it is believed that the information provided during the proceeding would be traumatic for the child to hear, request that the child be excused from the courtroom during the time the traumatic information is produced, or recommend that the child not attend the court proceeding.
- If the child is called to testify, consider discussing the environment under which the child will testify with counsel and unrepresented parties and offer possible alternatives. For example, meeting with the judge in chambers; meeting with the judge and GAL in the courtroom but not in the presence of the parties and/or counsel; meeting with the judge, GAL and counsel in the courtroom but not in the presence of the parties; or testifying in open court without any accommodations. (See §§ 18.2-67.9, 16.1-252 D, 63.2-1521 and 20-124-2:1 (applicable in circuit court only).)



**F.** Appear in court on the dates and times scheduled for hearings prepared to fully and vigorously represent the child's interests.

COMMENT: As in any case, the GAL is expected to act as an advocate for the client child. This demands attendance at all hearings with the intention of presenting a well formulated position based on the facts. This position should be supported by the GAL's independent investigation, and through the development of a theory and strategy for the case. The GAL should prepare, present and cross-examine witnesses, offer exhibits, and provide independent evidence as necessary. Although the child's position may overlap positions of other parties such as the parents, the GAL should be prepared to participate fully in every hearing and not merely defer to or endorse the positions of other parties. The GAL acts as an advocate and uses every attorney skill appropriate to further a result favorable to the child's best interest. The GAL should never engage in *ex parte* communications with the court or submit written material to the court without promptly delivering a copy to the other parties and their counsel.

- Prior to accepting appointment as a GAL, ensure your availability for subsequent court proceedings. Consider planned vacations, upcoming trials, due dates for appellate briefs, etc. that might interfere with the completion of required duties. Although specific dates may not be available at the time of appointment, consider the time line requirements for child dependency cases, particularly those occurring within the first 80 days, and carefully assess whether to accept the appointment. If there is a potential conflict, advise the court so that a decision can be made about whether another attorney should be appointed to the case.
- Be prepared for court proceedings. Have a theory and strategy for the case. Present opening remarks, cross-examine witnesses, make objections, present evidence, when appropriate, and present closing remarks. If required by the court, submit, as indicated by Standard H, a written report to the court and provide this report to the parties and counsel at least 5 days prior to the scheduled court date. Provide the court with findings and recommendations resulting from completion of the interview with the child and independent investigation required by *Performance Standards* A and B.
- If a written report is not required, organize a statement to the court as to findings, recommendations, services, etc.
- Be familiar with the statutorily mandated hearings for child dependency cases and with the types of court orders entered in these proceedings. Review any court orders placing the child in foster care to ensure the following:
  - The court has stated the basis for its determination.
  - The court noted that continued placement in the home would be contrary to the welfare of the child.
  - The court noted that reasonable efforts to prevent removal were made.

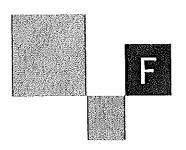
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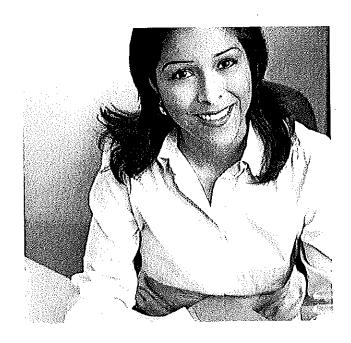
Note: If these findings are not included on the first order placing the child into foster care, the child's entire stay in foster care may be ineligible to receive federal financial assistance. The first order placing a child in foster care may be an emergency removal order, preliminary removal order, or disposition order, if the child has not previously been removed from the home, or enters foster care for a reason other than abuse or neglect.

Meview the foster care review hearing order and permanency planning order to ensure that the court has stated the factual basis for its determination as to whether reasonable efforts to reunite the child with his/her parents were made, or reasonable efforts are not required, or as to whether or not reasonable efforts to finalize a permanent plan were made.

Note: If these findings are not made, the child's stay from the date the findings should have been made, may be ineligible to receive federal financial assistance in foster care maintenance.

- If contrary to the GAL's assessment of the child's best interests, inform the court of the child's expressed wishes.
- Review the Comment provided as a part of Standard H, as it includes items that the GAL's arguments to the court should address.





The GAL should prepare, present and cross-examine witnesses, offer exhibits, and provide independent evidence as necessary. Although the child's position may overlap positions of other parties such as the parents, the GAL should be prepared to participate fully in every hearing and not merely defer to or endorse the positions of other parties. The GAL acts as an advocate and uses every attorney skill appropriate to further a result favorable to the child's best interest.

-Comment, Standard F



**G.** Prepare the child to testify, when necessary and appropriate, in accord with the child's interest and welfare.

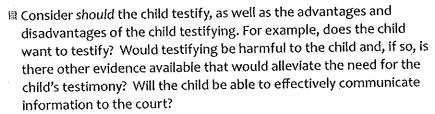
COMMENT: The GAL should determine whether to call the child as a witness based on consideration of the child's need or desire to testify, developmental and verbal capabilities of the child and the child's ability to withstand cross-examination. For some children testifying is therapeutic and empowering, while for others it may be very traumatic. The GAL must determine the possible benefits and repercussions of testifying and the necessity of the child's direct testimony. The GAL shall consult a mental health specialist or therapist working with the child, if there is one, to assist in evaluating whether testifying will cause trauma to the child. Consideration should also be given to the availability of other evidence or hearsay exceptions that may substitute for direct testimony.

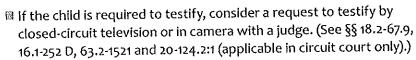
If the child does not wish to testify or would, in the GAL's opinion, be harmed by being forced to testify, the GAL should seek an agreement of the parties not to call the child as a witness or utilize other remedies such as an order from the court to limit the scope or circumstances of the testimony.

If the child is compelled to testify, the GAL should seek to minimize the adverse consequences by seeking appropriate accommodations as allowed by law, such as testimony taken by closed circuit television in accord with § 63.2-1521 of the Code of Virginia or an "in camera" interview of the child in the judge's chambers. The GAL should prepare the child for "in camera" interviews or testimony by explaining the nature and purpose of the proceeding and the use or disclosure that may be made of the information that the child provides during the proceeding.

In juvenile delinquency, child in need of supervision, child in need of services, and status offense cases, the child's defense attorney will take responsibility for preparing the child to testify when necessary.

# PRVAYCHKOEHIPS/









H. Provide the court sufficient information including specific recommendations for court action based on the findings of the interviews and independent investigation.

COMMENT: The GAL is obligated to assure that all facts relevant to the case, available dispositional remedies and possible court orders are presented to the court. The GAL's arguments to the court should address every appropriate aspect of the litigation including: analysis of any allegations of abuse, neglect or risk; analysis of factors to be considered in a determination related to custody and visitation; placement of the child; services to be made available to the child and family; dispositional alternatives for the child or parents in juvenile delinquency, child in need of supervision, child in need of services, status offense cases and custody and visitation arrangements; and any other orders the GAL deems to be in the child's interest. Recommendations for placements outside the home should take into consideration the availability and appropriateness of placement with relatives or friends, parental visitation and keeping a sibling group together.

The GAL's arguments should contain, but not be limited to, an analysis of and comment on plans presented by other parties such as the Department of Social Services, court services staff, or as a result of mediation.

In certain circumstances, a summary of the GAL's findings with recommendations and the basis for those recommendations may be presented to the court. Such circumstances include the dispositional phase of a case involving both an adjudicatory and dispositional phase or, at the request of the court, in a custody/visitation case. This summary may be written or oral. If written, copies of the summary should be provided to the other parties and their counsel at least five days prior to the hearing unless otherwise directed by the court.

In foster care placement, permanency planning, foster care review proceedings, and mediated agreements, the GAL should be aware of the proposed plans, should consult with the child about the proposal, and explore any alternatives the GAL believes are more appropriate. If the GAL disagrees with such plans, the court should be advised of this disagreement supported by evidence or information gleaned from the GAL's independent investigation.



- For those jurisdictions where the GAL accepts appointments, know the court's approach and expectations regarding written reports.
- □ Present a case to the court that includes findings and recommendations and argue those findings and recommendations during the closing argument. GALs are not a rubber stamp for the beliefs and arguments of any party, whether the local department of social services, a parent, a third party, the Commonwealth's Attorney, etc.

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- If the child is the subject of a protective order, advise the court of conditions needed to protect the life, health, safety and normal development of the child while remaining in the home.
- Provide recommendations to the parties and/or counsel prior to the hearing date and time. Be willing to defend the recommendations, but also be willing to modify the recommendations, as appropriate, based upon new or revised information acquired during the court proceedings. When appropriate, be willing to admit error.
- If representing siblings, consider separate recommendations for each child.
- Review § 20-124.3, which provides a list of items to consider when determining the best interests of the child in custody or visitation arrangements. Additionally, understand child development issues and develop custody/visitation recommendations based on the age and needs of the child, as well as the circumstances of the family. Consider consulting with professionals, as appropriate, to screen recommendations. Actively filter biases and be willing to challenge personal assumptions. Do not allow personal life experiences to become the lens through which matters related to the child are considered.
- As provided in the Standard, "assure that all facts relevant to the case, available dispositional remedies and possible court orders are presented to the court."



• Communicate, coordinate and maintain a professional working relationship in so far as possible with all parties without sacrificing independence.

COMMENT: Whenever it is appropriate to the child's needs and consistent with the direction of the court, the GAL should attend all meetings or hearings involving legal, educational and therapeutic issues specifically related to the case. These would include meetings of the Family Assessment and Planning Team, Individualized Education Plan (IEP) meetings, school disciplinary or other educational meetings, and foster care placement and review meetings. The GAL can present the child's perspective, gather information necessary to proper representation, and potentially achieve a negotiated settlement of all or some issues of the case at such meetings.

The GAL should contact any CASA volunteer assigned to the case and coordinate all aspects of the investigation with the CASA volunteer. Such volunteers can offer significant information and assistance to the GAL.

The GAL should contact the attorneys for the other parties to the case as soon as possible and at least seventy-two hours prior to any hearing. Counsel for other parties to the case may have information not included in any of the available records and can provide their respective clients' perspectives. Appropriate communication should be maintained between the GAL and all agencies and professionals involved in the case.

#### BRAKCHIKEL HIPS)

- Listen on behalf of the child, but also be a voice for the child.

  The information gathered during the course of a case will provide opportunities to recommend and advocate new and innovative solutions to issues that will promote the child's best interests.
- In jurisdictions that have a CASA program, it is important to contact the CASA volunteer assigned to the case and to coordinate all aspects of the investigation with the CASA. CASA can offer significant information and assistance, including interviewing hard-to-reach witnesses and supplementing information relevant to the case. However, do not relinquish the responsibility to investigate by leaving it solely up to the CASA volunteer. The GAL works jointly and cooperatively with CASA. CASA does not work at the pleasure of the GAL.



**J.** File appropriate petitions, motions, pleadings, briefs, and appeals on behalf of the child and ensure the child is represented by a GAL in any appeal involving the case.

COMMENT: The GAL should make appropriate motions, including motions in limine and evidentiary objections, to advance the child's best interest in court and during other proceedings. When necessary, the GAL should file briefs in support of legal issues. The GAL should file a show cause against a party who is not following a court order or a motion under § 16.1-278 to compel an agency to provide services if it is not doing so as ordered.

If the GAL believes the court's determination is contrary to the child's interest or welfare, after considering the wishes of the child, a notice of appeal should be filed and measures taken to assure that the appeal is perfected expeditiously. The GAL should file any appropriate pleadings on behalf of the child, including responses to pleadings of other parties.

The GAL should also ensure that the child has representation in any appeal related to the case regardless of who files the appeal. During an appeal process initiated by another party, the GAL for a child may file a brief and participate fully at oral argument.

If the GAL feels he or she lacks the necessary experience or expertise to handle an appeal, the GAL should notify the court and seek to be replaced.

# - PRIVAYCHIKGE HIPS

- Be an active, not passive, participant in court proceedings. Ensure petitions, motions, pleadings, briefs, and appeals are filed in a timely manner and that a hearing date is obtained as soon as possible. Court dockets, particularly juvenile court dockets, can be congested and waiting until the last minute will not provide for timely proceedings.
- Work with the other parties to solve problems. If it is in the child's best interest, be a "peacemaker."
- M Timely note any appeal on behalf of the child and actively participate in any matters that are appealed. This includes cases appealed de novo to the circuit court and on the record to the Court of Appeals of Virginia and the Supreme Court of Virginia.
- If representation of the child has come to an end, consider having termination of representation language inserted into any final order entered by the court.



**K.** Advise the child, in terms the child can understand, of the court's decision and its consequences for the child and others in the child's life.

COMMENT: The GAL should review all orders to ensure they conform to the court's verbal orders and statutorily required findings and notices. The GAL should discuss all such orders and their consequences with the child. The child is entitled to understand what the court has done and what that means to the child. The GAL should explain whether the order may be modified or whether the actions of the parties may affect how the order is carried out. For example, an order may permit an agency to return the child to the parents if certain goals are accomplished.

- The role of the GAL extends to meeting with the child and explaining to him/her the outcome of the court proceedings and court ruling(s).
- Speak with the child as soon as possible after court proceedings are concluded to explain any court rulings, services to be provided, etc. If the child is present, meet with him/her at the court. If the child is not present, arrange to speak with the child by phone. For a child who is in a residential setting, it may be appropriate to coordinate the call with the resident counselor or therapist. Be as straightforward as possible in explaining the court's ruling(s) to the child.
- When informing the child of court proceedings, do so based on the ability of the child to understand. Be clear and simple and invite him/ her to ask questions when there is an aspect of the explanation that is unclear. If the community has a handbook for court-involved youth that will help the child better understand the court process, provide a copy to the child.
- As appropriate, have the child appear in court with the parties and/or counsel and ask the court to explain the outcome of the proceedings to the child.



# Ethical Considerations for Attorneys Serving as Guardians Ad Litem

Rules of Professional Conduct - Virginia State Bar

NULE 1.1: COMPETENCE: As a general rule, attorneys must competently represent their clients. Rule 1.1 defines competent representation as having "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

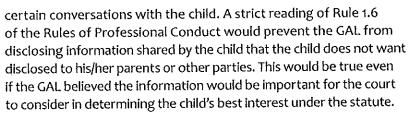
☑ RULE 1.2: SCOPE OF REPRESENTATION: The GAL must provide to

- the court what he/she believes is in the child's best interest, not the child's expressed wishes. In doing so, the GAL must consider the child's position. This requires an assessment of the child's age, maturity, mental capacity, competence, and environment.

  This duty conflicts with the traditional role of an attorney and is inconsistent with the attorney's responsibility under Rule 1.2 of the Rules of Professional Conduct, which requires an attorney to "abide by a client's decisions concerning the objectives of representation,...." However, the GAL is required by statute to present to the court what he/she believes is in the child's best interest, as well as the reasoning behind such assessment, regardless of what the child client has expressed. Additionally, the GAL has a duty to inform the court of any
- RULE 1.3: DILIGENCE: Paragraph (a) of Rule 1.3 requires an attorney to "act with reasonable diligence and promptness in representing a client." Comment [1] further demands action "with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf."

wishes expressed by the child that are inconsistent with the GAL's assessment of what is in the child's best interest.

- RULE 1.4: COMMUNICATION: As previously provided, Virginia Supreme Court Rule 8:6 requires the GAL to protect the child's "interest and welfare." Standard C further provides that the GAL shall "advise the child,..., of the nature of all proceedings, ... the court process and the possible consequences of the legal action." The child's interest and welfare should take precedence over communication requirements if the GAL believes that the information, if shared, would be detrimental to the child.
- RULE 1.6: CONFIDENTIALITY: Attorneys who serve as GAL are often unsure about the level of confidentiality that should be given to



However, not disclosing certain information may hinder the GAL's statutory duty to advocate for the child's best interest. As such, there are strategies the GAL may consider to alleviate concerns of a breach of confidentiality. These strategies include: (i) the GAL requests the permission of the court to redact the GAL's written report of the sensitive information and (ii) the GAL requests that the court issue a protective order to allow only counsel to review the sensitive information.

If the child is old enough to understand the limitations on confidentiality, the GAL should ensure that the child is aware of these limitations from the beginning of the representation.

If questions regarding confidentiality remain, Legal Ethics Opinion 1844 (2008) further addresses the issue. It notes that Rule 1.6 (b)(1) allows an attorney to disclose information protected by Rule 1.6 if such disclosure is necessary "...to comply with law or court order." Compliance, therefore, with the Performance Standards and Virginia Supreme Court Rule 8:6 justify disclosure.

The Opinion further provides, based on the Performance Standards,

that the duties of a GAL may extend further than those anticipated by the typical lawyer/client relationship, as the GAL not only serves as the child's advocate but is obliged to identify and recommend the outcome that best serves the child's interests. Therefore, the GAL needs to investigate information obtained from and about the child in order to ascertain certain facts. The GAL must interview parties and other persons who have relevant knowledge of the child and facts that give rise to the allegations. ....

Only after this investigation can the GAL independently make an evaluation. Through this independent investigation, the GAL assesses the risk of probable harm to the child. That assessment then leads to the determination of whether the GAL has a duty, as an advocate for the child's best interests, to disclose to the court or appropriate authority information necessary to safeguard the best interests of the child. That disclosure would be permitted in light of the Committee's analysis ... of Rule 1.6(b)(1), where a lawyer can reveal protected information to the extent reasonably necessary to comply with law.



RULE 4.2: COMMUNICATIONS WITH PERSONS REPRESENTED BY COUNSEL: This rule applies even though the represented person initiates or consents to the communication. Therefore, even if a parent approaches a GAL with questions or comments about the case, the GAL must immediately end communication unless the GAL obtains consent from the parents' attorney to speak with the parent.

Additionally, because the parties to child dependency cases work together closely outside of court, difficulty arises when applying Rule 4.2. The caseworker and child's counsel, in particular, have extensive contact with parents and the child, which is almost always outside the presence of attorneys. Issues arise not only when an attorney is preparing for court, but during home visits, educational meetings, case staffings, and other routine activities. It is best for GALs to get a clarification at the beginning of their appointment about when and how communication with parents may occur when parents' counsel is not present.

Parents' attorneys who are concerned about protecting their clients, especially in the pre-adjudication phase when allegations have not been sustained, should make clear to GALs, caseworkers, the agency's attorney, and the child's attorney, if applicable, that they are not consenting to any contact with their client outside of their presence. This rule also precludes parents' counsel from meeting with the minor child without the GAL's permission, because it prohibits ex parte communications with "persons" rather than "parties."

As to communications with caseworkers, the caseworker is not the "client" of the agency attorney, because the agency attorney represents the child welfare agency, not the individual caseworker.

#### Additional Ethical Considerations

© CONFLICTS & REPRESENTATION OF MULTIPLE CHILDREN: A GAL may face a different conflict analysis when representing multiple children of the same family. These conflicts, however, are viewed differently than traditional conflicts by the GAL whose duty is to protect the interests of the child even if contrary to the child's wishes. Because the GAL's role differs from that in the traditional attorney-client relationship, the GAL's unique role complicates resolving traditional ethics conflicts.

From the GAL's perspective, when representing multiple children, there may be no conflict of interest because the arguments for placing the children, although seemingly contradictory, ultimately serve their best interests. Possible conflicts may arise when the siblings want different outcomes in the case, such as wanting to

live with different parents. Advocating for the best interest of one sibling may compromise the best interests of another sibling. Contrary to traditional ethics conflict analysis, where an attorney should withdraw from both cases when a conflict arises, that analysis may differ where a GAL is involved. A GAL may be able to continue to represent one child and ask the court to appoint a different GAL for the second child.

In LEO 1725, the attorney/GAL raised the question of what to do when a GAL has a conflict in a case. The opinion indicates that in such situations the GAL must go to the appointing court to resolve the conflict. Because the relationship between the GAL and the "ward" is not the same as a traditional attorney-client relationship, and because the "ward" is a juvenile, the GAL cannot have the appropriate discussion to disclose the conflict and cannot get the consent that may be necessary to resolve a conflict.

☐ GAL AS A WITNESS: Because of the special nature of GAL appointments and the role of the GAL, the GAL may continue to represent a child and also testify as to disputed issues of material fact. However, as provided in the Introductory Comment to the Performance Standards,

the GAL acts as an attorney and not a witness, which means that he or she should not be cross-examined and, more importantly, should not testify. The GAL should rely primarily on opening statements, presentation of evidence and closing arguments to present the salient information the GAL feels the court needs to make its decisions.

The guardian ad litem should minimize his/her personal statements to the court to include only those events that the guardian ad litem personally witnessed, as well as recommendations that are based upon evidence, which has been admitted.

As to the issue of calling the GAL as a witness; LEO 1729 opines that there is a conflict between the attorney's ethical obligations under the "witness-advocate" rule and the attorney's duty as a GAL to report facts to the court that were learned during the GAL's appointment and investigation, and to make recommendations to the court based upon such facts. If the GAL cannot report to the court what the GAL has observed or learned during the visitation, for fear of violating the "witness-advocate" rule, then the GAL cannot discharge the legal obligations of his/her appointment. The GAL is charged with the duty of "fully protecting the child's interest and welfare." (See Virginia Supreme Court Rule 8:6.)



THE CHILD WITH "DIMINISHED CAPACITY": Determination of a client's capacity to make decisions and understand each issue relevant to the representation is not an easy task, nor is it one for which most attorneys are trained. Further, unlike the concept of "competency," "capacity" occurs along a continuum; therefore, capacity can be "diminished" but still exist.

Capacity refers to a client's ability to understand information relevant to the case and the ability to appreciate the consequences of a decision. Does the client really know what the case is about, what is happening, and what consequences might result from certain actions or inactions? Again, capacity refers to ability and comes in various degrees.

Competence is a legal standard, and denotes a specific level of skill, knowledge, or ability; a legal status the client either possesses or does not possess.

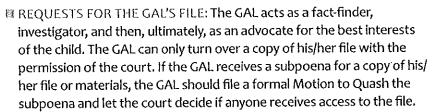
Factors to consider when assessing client capacity include: cognitive ability, emotional and mental development and stability, ability to communicate, ability to understand consequences, consistency of decisions, strength of wishes, and the opinions of others that play a role in the child's life. The child's age and developmental stage need to be taken into consideration with these factors.

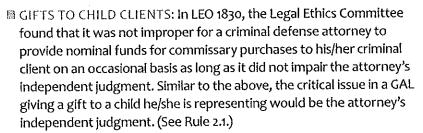
To the extent possible, the GAL should attempt to maintain a relationship with the child that consists of regular communication, interviews, advice and coordination with other parties.

Rule 1.14(b) provides guidance in those events where capacity issues are problematic.

When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical ... or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonable necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client....

M CHILD HAS A GAL AND DEFENSE COUNSEL: The defense attorney cannot deny the GAL access to his/her client. However, it may be reasonable for a GAL to conclude that a child's right to competent defense and right to due process of law is an important consideration in the best interests of the child and takes precedence over other considerations. Best practice supports postponing an interview with the child until the GAL has had an opportunity to confer with defense counsel.





The GAL is acting as an arm of the court in carrying out his/her duties. As such, the GAL is required to act independently and to maintain a professional working relationship with all parties. The GAL should be mindful of his/her role as an advisor, pursuant to Rule 2.1, and his/her duty of independence and advocacy and not confuse that with a more personal role of involvement with the child. While the rules would not preclude a GAL from giving a nominal gift to a child, the greater duty of maintaining the independence of the role and relationship leads to foregoing such gifts unless very specific circumstances exist.

RESPONSIBILITIES: When completing the DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, the court specifies the name of an attorney to "protect and represent the interests" of the child. The order does not provide for a specific law firm to represent the child. Therefore, it is not permissible for attorneys working together in a law firm to determine who will serve as the child's GAL or share in the duties of the GAL based on caseload and availability, even if all are qualified as GALs. Only the attorney whose name is referenced on the order may "perform the duties and have access to the parties and documents specified on the ... order."

The Rules of Professional Conduct may be accessed through the Virginia State Bar's website at http://www.vsb.org/pro-guidelines/index.php. For additional information about the above-referenced ethical considerations, or to discuss other ethics related issues involving the duties as a GAL, please contact the Virginia State Bar at 804.775.0500.

# Court of Appeals of Virginia Rulings Related to Guardian Ad Litem Representation

Selected Court of Appeals of Virginia rulings related to the representation of children by guardians *ad litem* are provided below. Included are the issue addressed by the court and the court's specific ruling. It is recommended that each case be reviewed for the factual basis of the ruling.

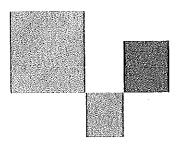
#### **GAL Appointment**

Ferguson v. Grubb, 39 Va. App. 549, 560, 574 S.E.2d 769, 774 (2003). "[B]oth the J&DR and circuit courts specifically found that this was a 'foster care prevention case,' requiring the continued intervention of the court, through the guardian *ad litem*, to protect the best interests of the children at issue. Under these circumstances, we find no error in the court's order directing the continued appointment of the guardian *ad litem*."

#### Duties of the GAL

Norfolk Division of Social Services v. Unknown Father, 2 Va. App. 420, 425 n.5, 345 S.E. 2d 533, 536 n.5 (1986). Footnote 5 provides that "the duties of a guardian ad litem when representing an infant are to defend a suit on behalf of the infant earnestly and vigorously and not merely in a perfunctory manner. [The guardian ad litem] should fully protect the interest of the child by making a bona fide examination of the facts and if he does not faithfully represent the interest of the infant, he may be removed,...."





#### GAL as a Witness

Hernandez v. Chesterfield-Colonial Heights Department of Social Services., Memorandum Opinion, Court of Appeals of Virginia, Record # 2203-08-2, page 4, May 12, 2009 (unpublished opinion). "By overruling mother's objection, the trial court stated that it was accepting the guardian ad litem's statements about the children because 'it's a basis for her recommendation.' At this point in the trial, the guardian ad litem was explaining her recommendation to the circuit court. She was not testifying, as mother alleges."

Role and Responsibilities of the GAL in Termination of Parental Rights Cases Stanley v. Fairfax County Department of Social Services, 10 Va. App. 596, 603, 395 S.E.2d 199, 202 (1990). "...Code § 16.1-283 does not restrict the guardian ad litem from initiating a termination petition as long as the required foster care plan recommending termination has also been filed."

M. G. v. Albemarle County Department of Social Services, 41 Va. App. 170, 177, 593, S.E.2d 761, 764 (2003). "[i]n a suit involving a termination of parental rights, a guardian ad litem for the child or children is an indispensable party to the appeal and, thus, qualifies as an 'opposing counsel' under Rule 5A:6(a), to whom the appellant has a duty to mail or deliver a copy of the notice of appeal."

This ruling was reaffirmed in\_Watkins v. Fairfax County Department of Family Services, 42 Va. App. 760, 595 S.E.2d 19 (2004).



# Re-qualification Requirements for Guardians Ad Litem

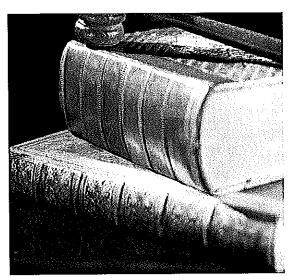
The requirements to re-qualify as a GAL are provided in Section B.2 of the Standards to Govern the Qualification of Guardians Ad Litem for Children ("Qualification Standards"). Section B.2 states, in part,

Complete six hours of approved continuing education biennially [after initial qualification] on any topic related to the representation of children as a guardian ad litem. Credit for repeating the basic training class, "Representation of Children as a Guardian Ad Litem" will be approved once within a six-year period. A maximum of six hours will be approved within a six-year period for programs designed especially for attorneys specializing in adoption.

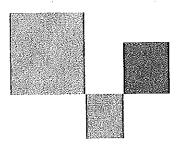
In order to provide flexibility in fulfilling this biennial requirement, a two-year carry-over of credit hours is permitted, so that accrued credit hours in excess of the two-year requirement may be carried forward from one two-year period to meet the requirement for the next two-year period. However, a maximum of six credit hours may be carried forward from one two-year period to the next two-year period. [Emphasis added.]

Upon completing a course carrying continuing education credit for GALs, submit the Certification of Attendance to the Guardian *Ad Litem* Program, 100 N. 9th Street, 3rd Floor, Richmond, VA 23219, or by facsimile at 804-786-1301.

The biennial timeframe noted above begins from the date of initial qualification, which is provided to the attorney in a letter from the Office of the Executive Secretary, Supreme Court of Virginia, confirming receipt of the information required to qualify the



attorney as a GAL. There are four possible qualification dates - January 1, April 1, July 1, and October 1. Thus, if the GAL's qualification date is October 1, 2010, the GAL is required to complete six hours of approved continuing education prior to October 1, 2012, and submit evidence of the completion of this requirement to the address above ten days prior to that date.



Qualification Standard F.1.b provides that failure to complete the continuing education requirement outlined in Standard B.2 shall result in the GAL's removal from the list of qualified GALs. Qualification Standard F.2 provides that an attorney removed from the list of qualified GALs may again be included on the list of attorneys eligible for appointment by submitting the following:

- a. Within one year of being removed from the list, certification of attendance indicating completion of the required six (6) hours of continuing education.
- b. If <u>more than one year passes</u> since removal from the list, certification of attendance indicating completion of seven (7) hours of approved continuing education.
- c. If <u>more than five years pass</u> since removal from the list, complete the initial qualification process as outlined in Standards A, B.1, C, D, and E.1....

The Office of the Executive Secretary will notify the GAL six months prior to the end of the biennial timeframe if the GAL has not completed the required six hours of continuing education. Thus, a GAL with a qualification date of October 1, 2010 will be notified on or about April 1, 2012 that the GAL must complete the required six hours of continuing education to remain qualified after October 1, 2012.

The Standards to Govern the Qualification of Guardians Ad Litem for Children are available online at http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/children/home.html

# Continuing Education Courses for Guardians Ad Litem

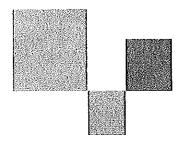
Courses meeting the continuing education requirement are approved by the Office of the Executive Secretary, Supreme Court of Virginia. A list of approved courses is available online at <a href="http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/children/home.html">http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/children/home.html</a>. If the GAL has attended a course that is not included on the list and believes it will satisfy the continuing education requirements for guardians ad litem for children, the GAL may submit the complete agenda, any course/session descriptions, and speaker biographies to the Guardian Ad Litem Program, 100 N. 9th Street, 3rd Floor, Richmond, VA 23219, or by facsimile at 804-786-1301.

# Compensation of Guardians Ad Litem

Guardians *ad litem* are compensated at the rate of \$75 per hour for in-court service and \$55 per hour for out-of-court service, a rate approved by the Supreme Court of Virginia. The documentation method for payment as a GAL is the same as that used for court-appointed counsel, the DC-40, LIST OF ALLOWANCES, which must be approved by the appointing trial judge. However, if the amount of reimbursement exceeds \$500, GALs submit an itemized statement that details the dates, times and tasks performed for the hours claimed (e.g., "meeting with client," interviewing parent," etc.). The court is authorized to pay for the reasonable expenses of a GAL incurred in representing a child.

Chapter 7 of the Court-Appointed Counsel Procedures and Guidelines Manual provides additional information regarding payment of attorneys serving as a GAL. The Court-Appointed Counsel Procedures and Guidelines Manual is available online at http://www.courts.state.va.us/legal.html.





# Compensation of Experts

Section 17.1-612 authorizes "Every witness who qualifies as an expert witness, when compelled to attend and testify, shall be allowed such compensation and mileage as the court may, if requested in its discretion, order without regard to any limitation described [in this section] but the same shall be paid by the party in whose behalf he shall testify."

An opinion by the Virginia Attorney General provides for compensation of expert witnesses in child abuse cases in the juvenile court. (See 1979-80 Op. Va. Atty. Gen. 401.)

Before engaging any expert witness, the GAL should obtain prior approval from the trial judge.

The documentation method for payment of an expert witness is the DC-40, LIST OF ALLOWANCES, which must be approved by the trial judge. A court order qualifying the individual as an expert witness and an itemized invoice is required and must be submitted with the DC-40.



# On-line Resources for Guardians Ad Litem

### Children's Services System Transformation

#### www.vafamilyconnections.org

Stay connected about Virginia's Children's Services System Transformation. Included is the Children's Services Practice Model, which sets forth a vision for the services that are delivered by all child-serving agencies in Virginia.

# Virginia's Comprehensive Services Act (CSA)

#### www.csa.state.va.us

Learn more about the Comprehensive Services Act for At-Risk Youth and Families. Information includes the CSA Manual and other publications, statewide statistics, and local contacts.

# Virginia's Court Appointed Special Advocate (CASA) Program

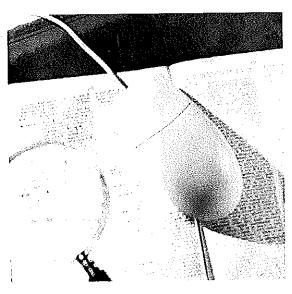
#### www.dcjs.virginia.gov/juvenile/casa

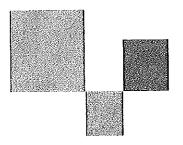
Become familiar with CASA programs in Virginia. Information includes a description of Virginia's CASA program, including a listing of operational local CASA programs.

### Virginia Department of Social Services

#### www.dss.virginia.gov

Provides local agency contact information, as well as a description and information about the various programs and services for children.





#### Virginia's Judicial System

www.courts.state.va.us

Provides general information about Virginia's court system and court administration.

# Guardian Ad Litem for Children Program

www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/children/home.html Information used to administer the GAL program in Virginia is included here. Provided are links to the Standards to Govern the Appointment of Guardians Ad Litem for Children, forms required for submission of continuing education credit, a list of courses approved for GAL continuing education credit, and listings of currently qualified GALs for children.

#### Juvenile and Domestic Relations District Courts

www.courts.state.va.us/courts/jdr/home.html
General information about the juvenile courts is provided. Included are links to individual court home pages, forms, programs, manuals (i.e. Court-Appointed Counsel Procedures and Guidelines Manual, District Court Judges' Benchbook, Juvenile and Domestic Relations District Court Manual, etc.) and other resources and reference materials.

#### Virginia State Bar

www.vsb.org

The Member's Area provides Virginia attorneys with more than 30 selected circuit and district court forms. These forms include the DC-500 series, which are used in child dependency cases before the juvenile and domestic relations district courts.

Sample Checklist for Attorneys Serving as a Guardian Ad Litem for Children Commonwealth of Virginia: \_\_\_\_\_ [ ] CIRCUIT COURT [ ] JUVENILE AND DOMESTIC RELATIONS City/County DISTRICT COURT In re: Case No: GUARDIAN AD LITEM PERFORMANCE STANDARDS CHECKLIST Pursuant to the Standards to Govern the Performance of Guardians Ad Litem for Children ("Performance Standards") adopted by the Judicial Council of Virginia, effective September 1, 2003, I \_\_\_\_\_\_ Guardian Ad Litem (GAL) for the abovereferenced child, certify that I have completed the following actions in compliance with the Performance Standards: 1. Upon receiving an order for appointment as the GAL in this case, I met face to face with the child on \_\_\_\_\_\_ to discuss this proceeding. In doing so, I made every effort to ensure that the child understands, by using age appropriate language, the nature of this proceeding, the child's rights, my role and responsibilities as GAL, the court process, the possible consequences of the legal action, the circumstances under which confidentiality may and may not apply, and how to contact me. OR ☐ Since the last court proceeding, which was held on \_\_\_\_\_ I have maintained meaningful contact with the child to monitor his/her welfare and the parties' compliance with court orders. As a part of this communication, I have continued to ensure that the child understands, by using age appropriate language, the nature of this proceeding, the child's rights, my role and responsibilities as GAL, the court process, the possible consequences of the legal action, the circumstances under which confidentiality may and may not apply, and how to contact me. This contact occurred on (please list all dates that apply) OR  $\square$  I have not met with the child regarding this proceeding. The following specific facts detail the reason:

	This includes inter	viewing partie child and the f	s to the acts tha	dispute and other pe t gave rise to the alle	he facts of the case. ersons with relevant egations, and reviewing	
Per	sons interviewed	Date(s)	÷	Records Reviewed	Date(s)	
···-						
		1				
OR	investigation in the contact with the education profess	nis case. As add child, DSS, the sionals, medica ormation will be	ditional i child's p al profes	arents, the child's cu sionals, CASA, (if ap	ed through continued	
3. 	Since the last cou pleadings/ briefs/	art proceeding and appeals o	I have fi on behalf	ed the following pe of the child.	titions /motions/	
4. OR	explain to the ch	ild the court's arrangements	decision	n the child at the cor and consequences f with the child after		Э
	Date		<del></del>	Signature of Gu	ardian Ad Litem	-

OF GUARDIAN <i>AD LITEM</i>		ourt Case No.:
Commonwealth of Virginia VA. Co	DDE § 16.1-266	
		cuit Court
CITY OR C	DUNTY [ ] Juv	enile and Domestic Relations District Court
n re:	JUVENILE	
	v.	
PETITIONER This proceeding involves a Petiti-	on/Motion regarding:	RESPONDENT
[] custody	[ ] child abuse or neglect	[ ] delinquency
[ ] visitation	[ ] termination of parental rights	[ ] child in need of services
[ ] child support	[ ] entrustment	[ ] child in need of supervision
[ ] paternity	[ ] family abuse protective order	• • •
[ ] consent to adoption	[ ] other:	
and the Court finds that:	• • • • • • • • • • • • • • • • • • • •	
	re is entitled to the appointment of a on	ardian ad litem pursuant to § 16.1-266 of th
-	e best interests of the child are not adec	
• •	an ad litem is otherwise required by law	<i>.</i>
OR		
		bove is a person under a disability and is
		ed to the appointment of a guardian ad liten
	interest in this proceeding and is entitle fithe Code of Virginia because of the	ed to the appointment of a guardian ad liten
	of the Code of Virginia because of the f	ed to the appointment of a guardian <i>ad liten</i> following disability:
pursuant to § 16.1-266 o	of the Code of Virginia because of the	ed to the appointment of a guardian ad liten
pursuant to § 16.1-266 o	of the Code of Virginia because of the	ed to the appointment of a guardian <i>ad liten</i> following disability:
pursuant to § 16.1-266 of [ ] incarceration [ ] mental illness	of the Code of Virginia because of the	ed to the appointment of a guardian <i>ad liten</i> following disability:
pursuant to § 16.1-266 o  [ ] incarceration  [ ] mental illness  The Court Orders that:	of the Code of Virginia because of the factorial formula and the factorial formula for the factorial for the factori	ed to the appointment of a guardian <i>ad liten</i> following disability:
pursuant to § 16.1-266 of [ ] incarceration [ ] mental illness  The Court Orders that:	of the Code of Virginia because of the second control of the secon	ed to the appointment of a guardian <i>ad liten</i> following disability:  by appointed as guardian <i>ad litem</i> to protec
pursuant to § 16.1-266 of [ ] incarceration [ ] mental illness  The Court Orders that:  NAME OF ATTORNE and represent the interests of	of the Code of Virginia because of the second control of the secon	ed to the appointment of a guardian <i>ad liten</i> following disability:
pursuant to § 16.1-266 of [ ] incarceration [ ] mental illness  The Court Orders that:  NAME OF ATTORNE and represent the interests of involved in this matter.	of the Code of Virginia because of the factorial file of the facto	ed to the appointment of a guardian <i>ad liten</i> following disability:  by appointed as guardian <i>ad litem</i> to protec  in connection with all proceedings
pursuant to § 16.1-266 of [ ] incarceration [ ] mental illness  The Court Orders that:  NAME OF ATTORNE and represent the interests of involved in this matter.	f the Code of Virginia because of the factorial file of the factor	ed to the appointment of a guardian <i>ad liten</i> following disability:  by appointed as guardian <i>ad litem</i> to protec  in connection with all proceedings
pursuant to § 16.1-266 of [ ] incarceration [ ] mental illness  The Court Orders that:  NAME OF ATTORNE and represent the interests of involved in this matter.  The date and time for the next	f the Code of Virginia because of the second	ed to the appointment of a guardian ad literal following disability:  by appointed as guardian ad literal to protect in connection with all proceedings
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pursuant to § 16.1-266 of [ ] incarceration [ ] mental illness  The Court Orders that:  NAME OF ATTORNE and represent the interests of involved in this matter.  The date and time for the next	f the Code of Virginia because of the second	ed to the appointment of a guardian ad liten following disability:  by appointed as guardian ad litem to protec  in connection with all proceedings
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In conforming to the following standards of performance, guardians ad litem shall comply with Rule 8:6 of the Rules of the Supreme Court of Virginia and shall be further informed of their duties and responsibilities by the commentary of the Standards to Govern the Performance of Guardians Ad litem for Children as adopted by the Judicial Council of Virginia effective September 1, 2003.

In fulfilling the duties of a guardian ad litem as appointed pursuant to this Order, an attorney shall:

- A. Meet face to face and interview the child.
- B. Conduct an independent investigation in order to ascertain the facts of the case.
- C. Advise the child, in terms the child can understand, of the nature of all proceedings, the child's rights, the role and responsibilities of the guardian ad litem, the court process and the possible consequences of the legal action.
- D. Participate, as appropriate, in pre-trial conferences, mediation and negotiations.
- E. Ensure the child's attendance at all proceedings where the child's attendance is appropriate and/or mandated
- F. Appear in Court on the dates and times scheduled for hearings prepared to fully and vigorously represent the child's interests.
- G. Prepare the child to testify, when necessary and appropriate, in accord with the child's interest and welfare
- H. Provide the court sufficient information including specific recommendations for court action based on the findings of the interviews and independent investigation.
- Communicate, coordinate and maintain a professional working relationship, in so far as possible, with all parties without sacrificing independence.
- J. File appropriate petitions, motions, pleadings, briefs and appeals on behalf of the child and ensure that the child is represented by a guardian ad litem in any appeal involving the case.
- K. Advise the child, in terms the child can understand, of the court's decision and its consequences for the child and others in the child's life.

Decision-making power resides with the court.

Failure to perform these duties may result in the appointing court's refusal to authorize payment of the fees requested by the guardian *ad litem* or a reduction of the payment requested, removal from the assigned case or removal from the court's Guardian *Ad Litem* Appointment List.

The guardian ad litem is authorized to appear at the Family Assessment and Planning Team and at panel review hearings conducted by the local department of social services pursuant to Virginia Code § 63.2-907.

The guardian ad litem appointed to represent the child shall have access to the following persons and documents without further Order of the Court:

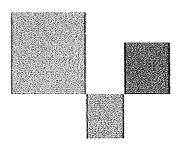
- A. The child.
- B. Parties to the proceeding.
- C. Court Appointed Special Advocate (CASA), local department of social services and court services unit worker in the case, and school personnel involved with the child.

Upon presentation by the guardian ad litem of this order, the guardian ad litem shall have access to any records relating to the child held by any state or local agency, department, authority or institution and any school, hospital, physician or other health or mental health provider who shall permit the guardian ad litem to inspect and copy such records without the consent of the child or his parents. Upon the request of a guardian ad litem made at least seventy-two hours in advance, a mental health provider shall make himself available to conduct a review and interpretation of the child's treatment records which are specifically related to the investigation. Such a request may be made in lieu of or in addition to inspection and copying of the records.

FORM DC-514 (REVERSE) REVISED 9:03

The following resources were heavily relied upon in the development of the Standards to Govern the Performance of Guardians Ad Litem for Children:

- American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, approved by the American Bar Association House of Delegates, February 5, 1996.
- American Bar Association Family Law Section Standards of Practice for Lawyers
   Representing Children in Custody Cases, Committee final draft approved April 24,
   2003, and approved by the Section Council on May 2, 2003.
- The New York State Bar Association Committee on Children and the Law: Law Guardian Representation Standards, Volume II, Custody Cases, November 1999.
- Representing Children: Standards for Attorneys and Guardians Ad litem in Custody and Visitation Proceedings, American Academy of Matrimonial Lawyers, 1995.
- American Bar Association Standards of Practice for Lawyers Who Represent
   Children in Abuse and Neglect Cases (NACC Revised Version), National Association
   of Counsel for Children, February 1996.
- Richmond Juvenile and Domestic Relations District Court Guardian Ad Litem Standards.

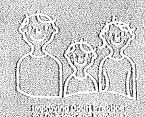


Notes



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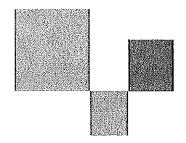
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# Standards to Govern the Performance of Guardians Ad Litem for Children

In conforming with the standards of performance, guardians ad litem shall comply with Rule 8:6 of the Rules of the Supreme Court of Virginia and shall be further informed of their duties and responsibilities by the commentary of the Standards to Govern the Performance of Guardians Ad Litem for Children as adopted by the Judicial Council of Virginia.

- A. Meet face-to-face and interview the child.
- B. Conduct an independent investigation in order to ascertain the facts of the case.
- C. Advise the child, in terms the child can understand, of the nature of all proceedings, the child's rights, the role and responsibilities of the GAL, the court process and the possible consequences of the legal action.
- D. Participate, as appropriate, in pre-trial conferences, mediation and negotiations.
- E. Ensure the child's attendance at all proceedings where the child's attendance would be appropriate and/or mandated.
- F. Appear in court on the dates and times scheduled for hearings prepared to fully and vigorously represent the child's interests.
- **G.** Prepare the child to testify, when necessary and appropriate, in accord with the child's interest and welfare.
- H. Provide the court sufficient information including specific recommendations for court action based on the findings of the interviews and independent investigation.
- Communicate, coordinate and maintain a professional working relationship in so far as possible with all parties without sacrificing independence.
- J. File appropriate petitions, motions, pleadings, briefs, and appeals on behalf of the child and ensure the child is represented by a GAL in any appeal involving the case.
- K. Advise the child, in terms the child can understand, of the court's decision and its consequences for the child and others in the child's life.

Decision-making power resides with the court.

Time Line – Child Abuse, Neglect and Foster Care Cases Virginia Juvenile and Domestic Relations District Courts

HEARING						
1 1 1	ilmina	Hearing for Preli	Hearing for Preliminary Child Protective Order	Adjudication		Disposition (initial foster care plan reviewed.)
	Emergency Removal	Preliminary Removal	oval			
STATUTE	§§ 16.1-253; 16.1-251	\$\$16.1-253; 16.1-253		§§ 16.1-253 F; 16.1-252 G		§§ 16.1-278.2; 16.1-281; 16.1-277.01; 16.1-277.02, 16.1-278.3
TIMING	Upon Filing of Petition (PPO-Abuse or Neglect) (ERO) In Any Matter (PPO)	Within 5 business days: After the issuance of th After the physical remo	e ex parte PPO. val of the child.	Within 30 days of the preliminary hearing, if no adjudication at the time of the preliminary hearing.	ry hearing, if	Within 75 days of PRO, PPO with abuse or neglect petition, or initial hearing on relief of custody or to dispose of child series; or or dispose of child series; or fittin 45 days (75 for Order of Publication) of filing of petition for approval of entrustment agreement.
#11.SOM 名言のである。	্রতি <u>তি</u> গুলুল তুর্ণ হার বিভাগ হার প্রতি					
HEARING TYPE	Foster Care Review					
STATUTE	§ 16.1-282			, the state of the		
TIMING	Within 6 months of dispositional hearing on initia	ing on initial foster care plan.				
AGES.	STAKGES, PERMINANEMEN PLANNING					
HEARING TYPE	Initial Permanency Planning (Plangoal to be achieved.)		Termination of Parental Rights (If no TPR at initial permanency planning hearing.)	f no TPR at initial permanency	Second Permar initial permane	Second Permanency Planning (If Interim plan approved at initial permanency planning hearing.)
STATUTE	§§ 16.1-282.1; 16.1-281 B; 16.1-283		\$16.1-283		\$ 16.1-282.1	
TIMING	Within 5 months of foster care review or within 30 days of finding reasonable efforts to reunite are not required. (Pet for TPR may be filed after filing of plan documenting TPR is the child's best interest.)	ition	Upon filing of Petition (After filing of plan documenting TPR is in child's best interest.)	g of plan documenting TPR is	Within 6 month	Within 6 months of initial permanency planning hearing.
आयुवह द	POSTI PERMANIENCY PLANNING					
HEARING TYPE	Review of Foster Care (If legal custody remains w is ordered.)	vith public or priva	remains with public or private agency after permanent goal	Adoption Progress Report (Filed until final order of adop	tion; hearing on	Adoption Progress Report (Filed until final order of adoption; hearing on motion of a party or the court.)
STATUTE	§§ 16.1-282.1 A2; 16.1-282.2			§§ 16.1-277.01 E; 16.1-277.02 D; 16.1-278.3 E; 16.1-283	6.1-278.3 E; 16.1-28	83
TIMING	Within 6 months of approving another planned permanent living arrangement (APPLA); or within 12 months of ordering; permanent foster care; independent living"; or permanent goal w/ TPR. (Adoption Progress Report reviewed, if plan is adoption.)	r planned permanent living a anent foster care; independ riewed, if plan is adoption.)	arrangement (APPLA); ent living"; or permanent goal	Filed every 6 months from date of final order terminating parental rights.	te of final order t	cerminating parental rights.
	"independent living eliminated as a permanency goal option for foster care plans approved for children entering foster care on or after 7/1/11.	al option for foster	care plans approved for children			

CIP/OES/SCV-July 1, 2011